

INFORMATION LETTER

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NATIONAL CANNERS ASSOCIATION

For Members
Only

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REVISED CANNED VEGETABLE CEILINGS ESTABLISHED

**Maximum Price Order No. 152, Issued by OPA
Supersedes the General Maximum Price
Order of April 28**

On May 23, 1942, Price Administrator Leon Henderson issued Maximum Price Regulation No. 152 setting forth the superseding price ceilings for a specified list of canned vegetables. The Association forwarded the complete text of this important new regulation to the industry on the same day, and the official text appears in the Federal Register for May 26, 1942, pages 3895-97. It also is reprinted in this issue of the INFORMATION LETTER on pages 7023 and 7024. The basis for these regulations and the price-support program of the Department of Agriculture was announced in a joint statement by OPA and USDA, released on May 19 and sent by the Association to all canners. (See INFORMATION LETTER No. 884, May 23, 1942, page 7011.)

The price ceilings provided for the listed canned vegetables supersede those prescribed in the General Maximum Price Regulation of April 28, 1942, which were based on the March, 1942 price levels. (See INFORMATION LETTER No. 881, May 2, 1942, page 6977.) The new price order is a permanent and not a temporary price regulation. For this reason the new canned vegetable Maximum Price Regulation No. 152 and the Statement of the Considerations on which it is based are set forth on pages 7023, 7024 and 7025, 7026 and 7027, respectively, together with such explanatory comment and interpretation as can be given at this time.

The Administrator's Statement

The Emergency Price Control Act of 1942 requires that every regulation, except a temporary price freezing order, shall be accompanied by a statement of the considerations involved in its issuance. The Statement accompanying the new price regulation, which is entitled "Canners' Prices for Canned Vegetables", together with the accompanying statistical tables, is largely self-explanatory. A careful reading

of its full text is essential to understanding the purpose and effect of the new price regulation. In its recognition of the seasonal character of the canning industry, in its acknowledgment of the necessity of expanded production for wartime needs, and in its demonstration that the General Maximum Price Regulation, which fell between two packing seasons, is basically inapplicable to the canning industry, the first part of the Statement effectively presents the reasons for a revised price regulation applicable to vegetable canners alone. In the second section, which discusses the fairness of the new price ceiling prescribed, the relation between 1941 packing costs and March, 1942 prices is discussed. Of special interest to canners is the recognition of the effects of the government program for increased grower prices in 1942

(Continued on page 7034)

APPLICATION OF WALSH-HEALEY ACT TO GOVERNMENT CANNED FOODS PURCHASES

Conditions Under Which Sales to Federal Agencies Are Subject to Hourly Provisions

During the past year there have been numerous changes in the methods of government buying of canned foods and modification of some of the legal restrictions applying to government contracts. Because of these changes, considerable confusion has arisen as to the application of the Walsh-Healey Act to purchases of canned foods by Federal agencies. The following general review of the present application of the Walsh-Healey Act, written in response to recent inquiries by canners, may be helpful to the industry during 1942 packing operations.

The three basic provisions of the law which govern any contract to which the statute is applicable are undoubtedly familiar to canners. They were fully explained in INFORMATION LETTER No. 811, November 2, 1940, p. 6365. Generally, on any contract with a government agency to supply canned foods of a value over \$10,000, employees performing work on such contract cannot work longer than eight hours a day or 40 hours a week without being paid time and one-half overtime; female workers under 18, boys under 16, and convicts cannot be employed; and sanitary conditions must be observed.

Despite various confusing press statements, there is no over-all general exemption from the Walsh-Healey Act covering all canned food purchases. For a contracting officer or a canner to decide whether there must be included in a particular contract some or all of the Walsh-Healey requirements, it is necessary to determine which government agency is buying the food, what commodity is being purchased, and, in some cases, whether a spot or future pur-

Meeting on Canned Fruit Price Regulation

A committee representing the fruit-canning branch of the industry conferred this week with representatives of the Office of Price Administration and the Department of Agriculture to discuss the basis for supplementary regulations for canned fruits under the General Maximum Price Regulation. The first meetings were devoted to development of information on the basic factors in the price-ceiling problem of the fruit canners. The Association will promptly advise the industry when definite action is taken.

chase is being made. On these facts it is possible to ascertain whether there is a complete or a partial exemption.

Subject to the detailed explanation set forth below, a short working rule may be suggested: If the purchase is by the Federal Surplus Commodities Corporation, the Walsh-Healey Act is inapplicable. If the purchase is by the War Department or any other agency, and the product is included in the list of those specifically exempted, the hourly limitations provisions do not apply and special rules for the employment of females 16 to 18 must be followed. If the canned food is not among the list of those specifically exempted, the hourly limitations and overtime provisions must be included in the contract and the special rules concerning females between 16 and 18 are also applicable.

Purchases by the Federal Surplus Commodities Corporation

By a series of administrative rulings and opinions, the Walsh-Healey Act has been held to be inapplicable to any purchase by FSCC pursuant to its regular offer and acceptance procedure. This is true whether FSCC is purchasing agricultural commodities or products, fishery products, or any other commodity for Lend-lease purposes. Thus, on any invitation to offer canned foods to that agency or in any negotiation with it, no question under the Walsh-Healey Act arises.

For those desiring the technical legal basis for this opinion, it may be pointed out that FSCC is an agency of the United States operating under the direction of the Secretary of Agriculture. Section 9 of the Walsh-Healey Act states:

"This Act shall not apply to . . . any contracts made by the Secretary of Agriculture for the purchase of agricultural commodities or the products thereof."

This language was originally interpreted by the Division of Public Contracts as follows:

"Contracts entered into by the Secretary of Agriculture for agricultural commodities and the products thereof and contracts entered into by the Federal Surplus Commodities Corporation for surplus agricultural commodities and the products thereof are, by virtue of section 9 of the Public Contracts Act, excluded from the operation of the Act." (Rulings and Interpretations, No. 2, Division of Public Contracts, September 29, 1939.)

Since the inclusion of the word "surplus" caused some ambiguity, the National Canners Association requested FSCC to clarify this section. On May 19, 1941, Administrator Milo Perkins wrote to the Association as follows:

"It is the opinion of the Solicitor of this Department that contracts made by the Federal Surplus Commodities Corporation for the purchase of agricultural commodities or the products thereof are not subject to the provisions of this Act. This is also the opinion of Mr. L. Metcalfe Walling, Administrator, Division of Public Contracts, Department of Labor, as shown by correspondence with other canners in which he says, 'Contracts (by the Federal Surplus Commodities Corporation) for agricultural commodities or the products thereof, such as canned or processed meats and vegetables, are not made subject to the Public Contracts Act.'"

(See INFORMATION LETTER No. 837, May 28, 1941, p. 6560.)

This left merely the question whether canned seafood when purchased by FSCC was covered by the Act. Prior to Lend-lease buying, the statutes authorizing FSCC to purchase surplus fishery products had provided that the Walsh-Healey

Act should be inapplicable. (See 15 U. S. C. A., Sec. 713c-2.) Since a seafood canner would not be able to tell whether FSCC was purchasing under this statute or for Lend-lease purposes, further clarification was requested of the Administrator. On May 31, 1941, in Opinion No. 3365, the Solicitor of the Surplus Marketing Administration ruled that Lend-lease purchases of canned fishery products were not covered by the Walsh-Healey Act. The result is that all purchases of canned seafood by FSCC are excluded from the statute.

Consequently, if the purchasing agency is the FSCC, there is no legal requirement that the stipulations under the Walsh-Healey Act be included in the contract, and in selling to this agency the omission of such requirements can be expected. Contracts so drawn cannot be questioned under the Act.

Canned Foods Wholly Exempt

On purchases by any other government agency besides FSCC, it is necessary, in the first instance, to determine the precise canned product which is being bought. For a specific list of canned fruits and vegetables, the Secretary of Labor has granted a complete exemption from the provisions of the Walsh-Healey Act. (See INFORMATION LETTER No. 884, May 23, 1942, p. 7014.) This list includes:

Apples, applesauce, apricots, asparagus, lima beans, string (or snap) beans, beets, blackberries, blueberries (huckleberries), carrots, catsup, cherries, corn, figs, fruit cocktail, grapefruit, grapefruit juice, various grapes, peaches, loganberries, pears, peas, pineapple, plums, prunes (fresh), pumpkin, raspberries, chili sauce, spinach, squash, tomato juice, tomato puree, and tomatoes.

This exemption, granted at the request of the Secretary of War, permits the awarding of contracts up to December 31, 1942, without inclusion of the stipulations of the Act. It should be noted that it covers any kind of a contract, whether for spot goods or futures.

Although there is no legal requirement that any of these stipulations be included, it is understood that the War Department will insert in each of its contracts for canned foods, including those on the above list, a modified requirement concerning the employment of children, convict labor and girls between 16 and 18. (See INFORMATION LETTER No. 880, April 25, 1942, p. 6965.) This clause, it is understood, will read substantially as follows:

"No male person under 16 years of age and no convict labor will be employed by the contractor in the manufacture or production or furnishing of any of the materials, supplies, articles, or equipment included in the contract. Girls between the ages of 16 and 18 years may be employed subject to the following conditions:

"(1) That no girl under 16 years of age shall be employed.

"(2) That no girl under 18 years of age shall be employed for more than eight hours in any one day, or between the hours of 10 p.m. and 6 a.m., or in any way contrary to State laws governing hours of work.

"(3) That no girl under 18 years of age shall be employed in any operation or occupation which, under the Fair Labor Standards Act or under any State law or administrative ruling, is determined to be hazardous in nature or dangerous to health.

"(4) That for every girl under the age of 18 years employed by him the contractor shall obtain and keep on file a certificate of age showing that the girl is at least 16 years of age.

"(5) That a specific and definite luncheon period of at least 30 minutes be regularly granted any women workers under 18 years of age.

"(6) That no girl under 18 shall be employed at less than the minimum hourly rate set by or under the Fair Labor Standards Act or the Walsh-Healey Public Contracts Act for the industry in which the exemption is granted."

The War Department also will add as a contract provision a stipulation requiring compliance with the safety, sanitary and factory inspection laws of the State in which any part of the work is performed.

Thus, on any of the specific commodities listed above, there is no legal requirement that any of the Walsh-Healey stipulations be included. The War Department, and possibly other agencies, will, however, as a provision of the contract include the quoted provision concerning child and convict labor and females between 16 and 18, and compliance with sanitary codes.

Partial Exemption for Canned Foods Not Wholly Exempt

On any canned foods other than those specifically listed above as wholly exempt, there is no exemption from the 8-hour day and 40-hour week required by the Walsh-Healey Act, but there is a partial exemption from the requirement that no female between 16 and 18 be employed. Such canned foods are included within the "Food Processing" industry, as to which a modified exemption with respect to the employment of girls between the ages of 16 and 18 has been granted. (See INFORMATION LETTER No. 880, April 25, 1942, p. 6965.) Pursuant to this order, the War Department and other agencies will include in their contracts the modified provision concerning females between 16 and 18 which is set forth above. To this limited extent, all canned foods are exempt. But on canned foods other than those specifically listed as wholly exempt, the overtime provisions of the Walsh-Healey Act are fully applicable.

Where it is found that canned foods are subject to the hourly limitations and overtime provisions of the Walsh-Healey Act, it is necessary to determine which employees are covered and at what time. For this purpose, the general distinction is drawn between sales of spot goods and sales of futures, since the requirements do not become effective until the contract is awarded. The detailed rules and applicable interpretations are set forth in INFORMATION LETTER No. 811, November 2, 1940, p. 6365.

The fact that such contracts result from negotiation, rather than advertised invitation for bids, or are part of the pack reserved by Conservation Order M-86-a, is immaterial.

First, the fact that a contract for unexempted canned foods is negotiated, does not render the Walsh-Healey Act automatically inapplicable. Originally, the Walsh-Healey Act was interpreted to cover only contracts awarded after advertising for bids. At the time of its passage on June 30, 1936, the wartime necessity for negotiated contracts, as that phrase is now understood, had not arisen. In 1940 it became apparent that the cumbersome method of advertising for bids and awarding contracts to the lowest bidder, although satisfactory during peacetime, was entirely inadequate in a period of national emergency to stimulate increased production. Accordingly, on July 2, 1940, Congress granted the President emergency powers to enter into any contract (through the appropriate agencies of the Govern-

ment) which might further the national security and defense, without advertising for bids. (Pub. N. 703, 76th Cong., 3d Sess. [July 2, 1940, Sec. 5], 54 Stat. 713.) Under this Act, the President's authority to make purchases was limited to an aggregate sum of \$66,000,000, and the Act expressly provided that any contracts which would ordinarily be subject to the Walsh-Healey Act were not exempted from the Act "solely because of being entered into without advertising pursuant to the provisions of this section." This proviso therefore anticipated and rejected the contention that contracts negotiated under this Act were exempt from the stipulations of the Walsh-Healey Act under the "open market" clause simply because advertising had been omitted. In short, this Act merely waived the necessity for competitive bidding while retaining the Walsh-Healey requirements.

This same Congressional intent was followed in subsequent enactments. On December 18, 1941, the First War Powers Act was passed empowering the President to authorize any government department performing functions in connection with the prosecution of the war, to enter into contracts without regard to any provisions of law regarding the "making, performance, amendment, or modification of contracts," in accordance with regulations prescribed by the President. (See Title II, Section 201 of the First War Powers Act, 1941, Pub. No. 354, 77th Congress.)

Pursuant to the authority conferred in the First War Powers Act, on December 27, 1941, the President authorized the War Department, the Navy Department, and the Maritime Commission to enter into contracts without competitive bidding, provided that

"no contract, modification or amendment thereof shall be exempt from the provisions of the Walsh-Healey Act . . . because of being entered into without advertising." (Executive Order No. 9001, December 27, 1941.)

Finally, a recent order of the War Production Board focused attention upon this shifting of emphasis on speed, rather than price. On March 4, 1942, the WPB ordered all departments and agencies authorized by the President to exercise the powers granted in Title II of the First War Powers Act (as stated above, the War Department, the Navy Department, and the Maritime Commission), to place military supply contracts by negotiation, and forbade competitive bidding except upon specific authorization of WPB. (Directive No. 2 of WPB, Release No. WPB 430, March 4, 1942.)

Thus, at the present time, it is clear that sales of canned fruits, vegetables and seafood to the Army, Navy, and Maritime Commission or to any other government agency (except FSCC) are subject to the hourly limitations of the Walsh-Healey Act unless (1) such products are specifically named in the exempt list in the order of the Secretary of Labor, or (2) the contracts are for a definite amount of \$10,000 or more, or (3) the canner raises and cans his own fruits and vegetables for first sale to the Government.

In this connection, a number of canners have raised the question whether Order M-86-a constitutes a contract for the purposes of the Walsh-Healey Act. With the exception of tomato catsup, each of the canned fruits and vegetables listed in M-86-a is included in the list of products which are completely exempt. However, none of the canned fish products listed in Supplementary Order M-86-b, which requires reservation of the entire 1942 pack of such canned fish prod-

ucts, have been included on any exempt list. It is not believed that the issuance of this pack reservation order alone should be construed as a contract so as to require that the packing of such foods in anticipation of the sale requires compliance with the Walsh-Healey Act. Conservation Order M-86 is not a contract to purchase, and its provisions clearly indicate that, in the event that no order for such goods is issued within a specified time, the goods are to be available for unrestricted sale and distribution.

Inter-Departmental Transactions

It was recently announced that the War Department would negotiate for the purchase of most of the canned foods reserved pursuant to Order M-86-a even though the products purchased were ultimately to be used for Lend-lease purposes. The precise procedure to be followed has not been fully determined. But for purposes of the Walsh-Healey Act and the applicable exemptions, the controlling fact will be the identity of the buyer. Only where FSCC is the contracting agency will the complete statutory exemption covering purchases by the FSCC be applicable. Where the War Department purchases, and later transfers goods to FSCC, the transaction will, for Walsh-Healey purposes, be deemed inter-departmental, and the canner should treat such sale as he treats any other sale to the War Department.

Omission of Stipulations

In view of the rapidly changing buying procedures of the various government departments, the question may arise as to what effect the omission of a stipulation prescribed by the Walsh-Healey Act will have upon the contract and upon the contracting canner. The Walsh-Healey Act is directed primarily at government officers, and not at contractors with the Government. (*Perkins v. Lukens Steel Co.*, 310 U. S. 113, 127.) The stipulated damages and penalties provided in that Act are directed at violation "of any of the representations and stipulations in any contract." (Section 2.) Necessarily, therefore, the penalties will not accrue unless there has been a breach or violation of a provision included in the contract.

Since the Act is a mandatory direction to government agencies to include the prescribed stipulations in certain government contracts, it limits the authority of such government agencies to make valid and binding contracts. (*Lender v. United States*, 7 Ct. Cls. 530; *Barnes et al v. District of Columbia*, 22 Ct. Cls. 366.) In ruling on this specific question in regard to omission of provisions of the Eight-Hour Law required to be inserted in contracts, the Comptroller General of the United States has said:

"It may be said, therefore, that as a general proposition a contracting officer exceeds his authority in failing to include in a contract to which applicable the provisions of the Eight-Hour Law. And it is a familiar rule that the unauthorized acts of the Government agents can not estop the Government from insisting upon their invalidity. *Filor v. United States*, 9 Wall. 45." Comptroller General's Opinion No. B-16920, June 14, 1941.

Since the Walsh-Healey Act specifies certain instances in which its provisions need not be included in contracts, as a general proposition canners may assume that contracts which do not include those stipulations either fall within the exceptions provided in the Act or have been specifically excluded from the Act by administrative ruling or interpretation. Should it later develop that such provisions were required

to be included in the contract, the canner may not be penalized for violation of the Act under the stipulated damages provision of Section 2. Conceivably, the Government might refuse payment under the contract on the ground that no valid, authorized contract had been made; but under settled principles, the canner would be entitled to the value of the goods delivered, which under most circumstances would probably be at least equal to the contract price. (See *Comptroller General's Opinion No. B-16920*, June 14, 1941.)

Price Ceilings Set for Canned Pork Products

Canned pork and pork products are included in Maximum Price Regulation No. 148, issued by the Office of Price Administration which fixes prices of dressed hogs and wholesale pork cuts at levels no higher than those actually prevailing for each individual packer-seller during the March 3 to 7 period. "Each type of canned or packaged meat, made entirely from pork, shall be considered a separate wholesale cut," states the order, which establishes individual ceilings for each seller's prices, based on his price lists and highest sales of the period February 16-20, 1942, plus certain stated additions representing the rise in material costs from February 16 to March 7, 1942.

For various canned pork products these permitted additions are cited in the order as follows: Regular ham, 1 1/4 cents; skinned hams, 3 cents; shoulders, 2 cents; picnics, 2 cents; butts, 3 cents; bacon, 1 1/4 cents; dry salt bacon, 2 cents; loins, 4 cents; pigs feet, 1 cent; canned meats made entirely from pork, 1/2 cent.

Maximum prices per cwt. are established for sales of specified canned pork items to the Federal Surplus Commodities Corporation or to any purchasing agency of the armed forces of the United States as follows:

Spiced luncheon meat (entirely from pork): 12-oz. can, \$42; 2 1/2-lb. can, \$39.25; 6-lb. can, \$38.

Spiced ham: 12-oz. can, \$43.50; 2 1/2-lb. can, \$40.75; 6-lb. can, \$39.50.

Pork sausage: 1 1/2-lb. can, \$29.50.

Pork sausage links: 2-lb. can, \$40.

Pork and soya links: 1 1/2-lb. can, \$31.50.

Corned pork: 12-oz. can, \$60; 6-lb. can, \$56.

Dry salt bacon: 12-lb. can, \$30.

Sliced bacon: 1 1/2-lb. can, \$36.25.

Pork tongues: 12-oz. can, \$41.25; 6-lb. can, \$37.25.

Canners' Sources Not Hit by Softwood Freeze

It has been pointed out that Order L-121, which has frozen sales and deliveries of softwood "construction" lumber by large producers, does not cover sales by retail and wholesale deliveries. Since canners will be supplied from the latter sources, it is not necessary for them to file appeals to the War Production Board until they have exhausted their present sources. The order banning sales and deliveries by the large producers except for needs of the Army, Navy and Maritime Commission, affects approximately 70 per cent of this country's softwood lumber production and applies particularly to timbers, framing items, and boards commonly used in building construction. But it leaves factory, shop, and box lumber, and all hardwood lumber free to move in the customary trade channels.

Text of Maximum Price Regulation No. 152—Canned Vegetables

In the judgment of the Price Administrator, seasonal conditions affecting the sale of canned vegetables by canners, and other factors, have resulted in the establishment, under the General Maximum Price Regulation,* of maximum prices for such sales which are not generally representative and which are not best calculated to assist in securing adequate production of such commodities.

This Maximum Price Regulation No. 152 is issued by the Price Administrator in order to establish for the canners of canned vegetables maximum prices which are fair and equitable and which will effectuate the purposes of the Emergency Price Control Act of 1942.

The maximum prices established herein are not below prices which will reflect to producers of the agricultural commodities from which canned vegetables are manufactured, a price for their products equal to the highest of any of the following prices therefor determined and published by the Secretary of Agriculture: (1) 110 per cent of the parity price for such commodity, adjusted by the Secretary of Agriculture for grade, location, and seasonal differentials; (2) the market price prevailing for such commodity on October 1, 1941; (3) the market price prevailing for such commodity on December 15, 1941; or (4) the average prices for such commodity during the period July 1, 1919 to June 30, 1929.

A statement of considerations involved in the issuance of this Regulation has been issued simultaneously herewith and has been filed with the Division of the Federal Register.

Therefore, under the authority vested in the Price Administrator by the Emergency Price Control Act of 1942, Maximum Price Regulation No. 152 is hereby issued.

Authority: Sections 1341.21 to 1341.31, inclusive, issued under Pub. Law 421, 77th Cong.

Section 1341.21 Prohibition against dealing in canned vegetables above maximum prices

(a) On and after May 25, 1942, regardless of any contract or other obligation, no canner shall sell or deliver any canned vegetables packed after the 1941 pack at a price higher than the maximum prices established by this Maximum Price Regulation No. 152;

(b) No person in the course of trade or business shall buy or receive any canned vegetables from a canner at a price higher than the maximum prices established by this Maximum Price Regulation No. 152;

(c) No person shall agree, offer, solicit or attempt to do any of the foregoing.

Section 1341.22 Canner's maximum prices for canned vegetables

(a) The canner's maximum price per dozen f. o. b. factory, for each kind, grade, and container size of canned vegetables packed after the 1941 pack shall be:

(1) The weighted average price per dozen charged by the canner f. o. b. factory, for such kind, grade and container size during the first 60 days after the beginning of the 1941 pack; plus

(2) Eight per cent of the weighted average price per dozen f. o. b. factory, as determined under paragraph (a) (1) of this section; plus

(3) The actual increase per dozen cans in the cost of the raw agricultural commodity as of May 4, 1942, over the cost of the raw agricultural commodity for the 1941 pack.

(b) In determining the canner's maximum price:

(1) The "weighted average price" shall be the total gross sales dollars charged for each kind, grade, and container size, divided by the number of dozens sold of such kind, grade, and container size. All sales made within the first 60 days after the beginning of the 1941 pack shall be included, except sales made to the armed forces of the United States and sales made prior to such period and delivered within such period.

(2) The "actual increase in the cost of the raw agricultural commodity" shall be the difference per dozen cans of each kind and container size, irrespective of grade, between:

(i) the weighted average cost to the canner of the raw agricultural commodity purchased for the 1941 pack, computed by dividing the total amount paid by the total number of tons or other unit purchased, and

(ii) the average of the prices per ton or other unit paid, or contracted to be paid by the canner to the growers for the same raw agricultural commodity up to and including May 4, 1942.

(c) The maximum prices for each kind, grade, and container size of canned vegetables for a canner who owns more than one factory shall be determined separately for each factory, except that if any group of two or more factories had the same f. o. b. 1941 factory prices the maximum prices for all the factories in the group shall be the maximum prices of the factory in the group which had the largest volume of production during the 1941 pack.

(d) If the maximum price for any kind, grade, and container size of any canned vegetables cannot be determined under paragraphs (a), (b) and (c) of this section, the canner's maximum price for such kind, grade and container size shall be the maximum price of the most closely competitive canner. If the canner's maximum price then cannot be determined, the maximum price shall be a price determined by the canner after specific authorization from the Office of Price Administration. A canner who seeks such authorization shall file with the Office of Price Administration, Washington, D. C., an application setting forth (1) a description in detail of the kind, grade and container size of canned vegetables for which a maximum price is sought; and (2) a statement of the facts which differentiate such kind, grade and container size of canned vegetable from the most similar kind, grade and container size for which he has determined a maximum price, stating such most similar kind, grade and container size, and the maximum price determined therefor. When such authorization is given, it will be accompanied by instructions as to the method for determining the maximum price. Within ten days after such price has been determined, the canner shall report the price to the Office of Price Administration, Washington, D. C., under oath or affirmation. The price so reported shall be subject to adjustment at any time by the Office of Price Administration.

(e) If the maximum prices for the canner of No. 2 U. S. Grade C or better canned tomatoes and No. 2 U. S. Grade C or better canned peas, as determined under this section, are lower than the support prices for canned tomatoes and canned peas announced by the Secretary of Agriculture on December 19, 1941, the support prices so announced shall be the maximum prices for such canner.

(f) No canner shall change his customary allowances, discounts or other price differentials unless such change results in a lower price.

Section 1341.23 Transfers of business or stock in trade

If the business, assets or stock in trade of a canner are sold or otherwise transferred on and after May 25, 1942, and the trans-

* 7 F. R. 3153, 3330, 3666.

freee carries on the business, the maximum prices of the transferee shall be the same as those to which his transferor would have been subject if no such transfer had taken place, and his obligation to keep records sufficient to verify such prices shall be the same. The transferor shall either preserve and make available, or turn over to the transferee all records of transactions prior to the transfer which are necessary to enable the transferee to comply with the record provisions of section 1341.26.

Section 1341.24 Less than maximum prices

Lower prices than those established by this Maximum Price Regulation No. 152 may be charged, demanded, paid or offered.

Section 1341.25 Evasion

The price limitations set forth in this Maximum Price Regulation No. 152 shall not be evaded, whether by direct or indirect methods, in connection with an offer, solicitation, agreement, sale, delivery, purchase or receipt of or relating to canned vegetables, alone or in conjunction with any other commodity or by way of any commission, service, transportation, or other charge, or discount, premium, or other privilege, or by tying-agreement or other trade understanding, or otherwise.

Section 1341.26 Records and reports

Every canner who makes sales of canned vegetables shall (a) preserve for examination by the Office of Price Administration all his existing records which were the basis for the computations required by Section 1341.22, and (b) preserve all records of the same kind as he has customarily kept, relating to the prices which he charged for canned vegetables sold on and after May 25, 1942, and (c) file with the Office of Price Administration, Washington, D. C., on or before July 1, 1942, a statement certified under oath or affirmation showing his weighted average price, his actual increase in the cost of the raw agricultural commodity, his maximum price determined hereunder for each kind, grade and container size of canned vegetables, and all his customary allowances, discounts and other price differentials, and (d) preserve a true copy of such statement for examination by any person during ordinary business hours. Any canner who claims that substantial injury would result to him from making such statement available to any other person, may file such copy of such statement with the appropriate field office of the Office of Price Administration. The information contained in such statement will not be published or disclosed unless it is determined that the withholding of such information is contrary to the purposes of this Maximum Price Regulation No. 152.

Section 1341.27 Penalties

Persons violating any provision of this Maximum Price Regulation No. 152 are subject to the criminal penalties, civil enforcement actions, and suits for treble damages provided for by the Emergency Price Control Act of 1942.

1341.28 Petitions for amendment

Persons seeking a modification of this Maximum Price Regulation No. 152 may file a petition therefor in accordance with the provisions of Procedural Regulation No. 1* issued by the Office of Price Administration.

Section 1341.29 Applicability

The provisions of this Maximum Price Regulation No. 152 shall be applicable to the United States, its territories and possessions, and the District of Columbia.

Section 1341.30 Definitions

(a) When used in this Maximum Price Regulation the term:

(1) "Person" includes an individual, corporation, partnership, association, any other organized group of persons, legal

successors or representatives of any of the foregoing and includes the United States, any agency thereof, any other Government, or any of its political sub-divisions and any agency of any of the foregoing.

(2) "Canner" means a person who preserves by processing and hermetically sealing in containers of metal, glass or any other material any of the products defined herein as canned vegetables.

(3) "Canned vegetables" means the following vegetables and products processed and hermetically sealed in containers of metal, glass or any other material:

| | |
|--|---------------------------|
| Artichokes | Paranips |
| Asparagus | Peas |
| Baby foods (chopped vegetables and vegetable purees) | Peppers |
| Bamboo sprouts | Pickles |
| Beans, snap (green or wax) | Rhubarb |
| Beans, lima (fresh) | Spinach |
| Bean sprouts | Succotash |
| Beets | Tomato catsup |
| Carrots | Tomato paste |
| Carrots and peas | Tomato puree |
| Celery | Tomato sauce |
| Chili sauce | Tomato juice |
| Corn | Tomatoes |
| Hominy | Turnips |
| Okra | Vegetable greens |
| Okra with tomatoes | Vegetables, mixed |
| Onions | Vegetable juice |
| | (except sauerkraut juice) |
| | Vegetable juice (mixed) |

(4) "1941 pack" of any canned vegetable shall be that pack the major portion of which was processed and hermetically sealed in metal, glass or any other container during the calendar year 1941. If any canned vegetable was packed more than once during the calendar year 1941 at the same factory, the earliest pack shall be the 1941 pack.

(b) Unless the context otherwise requires, the definitions set forth in Section 302 of the Emergency Price Control Act of 1942 shall apply to other terms used herein.

Section 1341.31 Effective date

This Maximum Price Regulation No. 152 (Sections 1341.21 to 1341.30 inclusive) shall become effective May 25, 1942.

Issued this 23d day of May, 1942.

LEON HENDERSON,
Administrator.

Relation of State Prices to Federal Ceilings

Nothing in the General Maximum Price Regulation authorizes sales below the minimum prices established under State fair trade laws if these minimums are equal to or less than the ceiling prices set by the regulation, Price Administrator Leon Henderson has stated.

Section 8 of the regulation providing that "lower prices than those established by this regulation may be charged, demanded, paid or offered" should not be construed to express an intent to void any seller's obligation to maintain minimum prices under any fair trade agreement or State fair trade act. The purpose of this provision, Mr. Henderson said, is to make clear to sellers and buyers that the Office of Price Administration is fixing maximum prices only.

Mr. Henderson's announcement supplements a statement issued by him a few days ago to the effect that State fair trade laws cannot require a retailer to sell above his ceiling price.

* 7 F. R. 971.

Statement of Considerations Involved in Issuance of Price Regulation No. 152

CANNERS' PRICES FOR CANNED VEGETABLES

The accompanying Maximum Price Regulation No. 152 establishing maximum f. o. b. factory prices for canned vegetables, is issued pursuant to the authority vested in the Price Administrator of the Office of Price Administration by the Emergency Price Control Act of 1942, approved January 30, 1942. This Regulation, insofar as it applies to canners of canned vegetables, supersedes the General Maximum Price Regulation issued by the Price Administrator on April 28, 1942. The accompanying Maximum Price Regulation No. 152 is issued by the Price Administrator to establish maximum canner's prices for canned vegetables at a level which will tend to secure adequate production of those commodities, and to prevent the application to canned vegetables of certain speculative increases in prices.

1. Effect of General Maximum Price Regulation on the Vegetable Canning Industry

The General Maximum Price Regulation, issued April 28, 1942, established as the maximum price for canned vegetables, each canner's highest selling price during March, 1942.

The nature of the canning process requires that vegetables be canned immediately after they have been harvested. With few exceptions, vegetables are harvested and canned only once a year; during the summer and early fall. Since large stocks are customarily maintained by wholesalers and retailers, canned vegetables are generally available to consumers throughout the year. Consequently, maximum prices for most canned vegetables have been established without difficulty at retail and wholesale levels pursuant to the General Maximum Price Regulation.

Most canners, however, sell all or the greater part of their pack of canned vegetables within a period of about six months from the beginning of the pack. As a result, the number of sales of canned vegetables by canners in March, 1942, was not great enough to permit the ready determination of maximum prices for all canners in all canning areas, for the numerous kinds, grades, and can sizes of canned vegetables. In some cases, where canners did sell canned vegetables in March, 1942, excessive prices were charged which bore no relation to the costs of packing in 1941, but were speculative in nature, induced by the steady rise in the prices of canned vegetables at wholesale and retail prior to March, 1942. In other cases, canners' sales of canned vegetables in March reflected only the costs of the 1941 pack.

Within the next few months, the canning of the 1942 crop of vegetables will be at its height. It is clear that the cost of raw materials as well as certain other costs will be higher for the 1942 pack than for the 1941 pack. Because of the comparatively small number of canners' sales in March, 1942, and the erratic range of prices in sales which did occur, the canning industry has been confronted with some uncertainty concerning the maximum prices which will be applicable to its sales of the 1942 pack. The largest possible pack of canned vegetables is required to meet the greatly expanded needs of the armed forces and the United Nations and also to satisfy in some measure the augmented demand of domestic consumers. Since the acreage of vegetables for canning is influenced by contracts between canners and growers, it is desirable that canners be able to ascertain promptly the maximum prices at which they will be permitted to sell their 1942 pack.

The present Regulation is therefore issued in order to secure maximum production and in order to prevent the imposition upon distributors of an inequitable burden resulting from the excessive speculative prices at which some canners sold canned vegetables in March, 1942.

To attain these objectives, the present Regulation provides that, for canned vegetables packed after the 1941 pack, each canner's

maximum price, per dozen f. o. b. factory, shall be the weighted average of his prices for each kind, grade and size during the first 60 days after the beginning of his 1941 pack; plus 8 per cent of that average price to allow for increases in costs other than raw material costs since the 1941 pack; plus the amount of actual increase in raw material costs, determined as of May 4, 1942.

Comprehensive data concerning the relationship between the canner's prices established by Maximum Price Regulation No. 152 and the prices at retail and wholesale established by the General Maximum Price Regulation is not immediately available. It is possible that the maximum prices for some wholesalers will not be sufficiently high with relation to the canner's maximum prices established by this Maximum Price Regulation No. 152 to permit them to handle the 1942 pack. Such a contingency is more likely to occur should it become necessary, in order to prevent undue pressure upon retailers, to establish the base period for wholesalers' maximum prices for canned vegetables at an earlier period than March. To prevent any substantial blocking of the distribution channels, the Department of Agriculture, after consultation with the Office of Price Administration, has announced that it will purchase the most important canned vegetables at prices equal to 92 per cent of the canner's maximum prices established by this Regulation. In the case of two outstanding commodities, tomatoes and peas, the Department of Agriculture had previously announced support prices which are incorporated in this Maximum Price Regulation No. 152 as the maximum prices for canners where that support price is higher than the canner's price ascertained under the provisions of this Regulation.

In the event that the relationship between wholesale and canner's prices is such as to make it impossible for wholesalers to deal in canned vegetables, they will be purchased by the Department of Agriculture for resale into wholesale channels.

The accompanying Maximum Price Regulation No. 152 therefore, in conjunction with the program of the Department of Agriculture, is calculated to induce maximum production, maintenance at all levels of selling prices which are generally fair and equitable, and prevent any cost of living increases in the prices paid by consumers for canned vegetables.

It should be noted that the support prices of 92 per cent of the maximum prices are calculated to give the canner substantially the same return as his maximum prices. The maximum prices are gross prices. They are computed before deducting such items as brokerage, discounts, sales expense and advertising allowances. Brokerage alone ordinarily amounts to approximately three per cent of the sales price. There need be no brokerage or advertising allowances and there will be at least partial savings in other sales expenses when sales are made to the Department of Agriculture at the support prices. For this reason, the net return to the canner selling at his maximum prices will not be substantially higher than the net support prices. Any slight differential remaining will serve as an additional incentive to move his goods into the usual distributive channels.

2. Prices Established by Maximum Price Regulation No. 152 Are Generally Fair and Equitable

(a) Justification for the use of the weighted average price per dozen f. o. b. factory.

The vast majority of canners sold the bulk of their pack in an open and competitive market resulting in a generally fair and equitable price position between canners. On the basis of 1941 costs of raw material, labor and other direct costs of production, these prices within the first 60-day period, resulted in a fair and equitable margin of profit to the industry as a whole. With a program of maximum production for 1942 in sight, in the judgment of the Price Administrator it is generally fair and equitable to

use 1941 prices as a basis for 1942 maximum prices because in general the canning industry had in 1941 established itself in a reasonably strong financial condition. The maintenance of this established position will tend to encourage the maximum production so necessary for the 1942 operations. The use of the weighted average price per dozen f. o. b. factory during the first 60 days after the 1941 pack, removes speculative increases and unduly high selling prices. As indicative of such speculative increases in the case of canned tomatoes No. 2 Standard in the Eastern area, the pack began in July, 1941, and the average opening price charged was \$1.58 per case. In September, 1941, within 60 days following the beginning of the pack in that area, this average had increased to \$1.64 per case. In March, 1942, this average price had reached \$2.20 per case as illustrated in Table I which is attached hereto. No. 2 Standard sweet white cream-style corn in the Eastern area in August, 1941, showed an average opening price of \$1.64 per case and in October, within the 60-day period after the beginning of the pack, the average price had increased to \$1.78 per case. However, in March, 1941, the average price paid was \$1.94 per case.

The other major vegetable crops show similar advances in a comparable period of time as reference to Table I will demonstrate.

(b) Increases in the Costs of Raw Material—1942 over 1941

To obtain the maximum production of canned peas and tomatoes the Government announced certain programs establishing higher prices to be paid in 1942 to growers of peas and tomatoes as an additional incentive to the planting of a larger acreage in order to meet growing demands upon the food industry brought about by the war effort. In order to obtain increased acreage for vegetables other than peas and tomatoes in 1942, the canners found it necessary to offer comparable increases to the growers for the majority of raw agricultural crops. These increased payments to growers by the canners, as evidenced by contracts entered into and market prices for the farm crop as of May 4, 1942, are shown in terms of national averages in the accompanying Table II.

It is obvious that canners could not sell their customers at the weighted average price for the 1941 pack at present, and still absorb the increases in the raw agricultural crop.

It is further recognized that if actual costs in raw agricultural products for 1942 over 1941 were allowed each canner without a top limit to what he could pay the grower, the result would be a runaway raw agricultural product market. It would further result in the clogging of the distributive channels, because the canner's cost would be out of relationship to the frozen retail ceilings. The accompanying Regulation permits the addition of raw agricultural commodity increased cost as of May 4, 1942 at which time most of the contracting for raw products for the 1942 season was completed. Prices contracted to be paid to growers or already paid to growers are sufficiently high to satisfy the requirements of Section 3(a) of the Emergency Price Control Act of 1942. Reference to Table III will show that the national average prices paid or contracted to be paid to growers of vegetables as of May 4, 1942 are equal to or exceed the highest of the four standards of Section 3(a). The accompanying Regulation allows the canners to add the increases paid or contracted to be paid by them but these increases insofar as they exceed raw product prices as they were on May 4, 1942 may not be included in the maximum prices. The canner is placed in a position which encourages him to operate to maximum capacity because his maximum price will substantially reflect his increases in raw product cost. Speculative bidding for acreage, which might result in the serious disruption of canned vegetable production is discouraged because these speculative increases cannot be included in the maximum prices. The Regulation recognizes and provides for an equitable increase in raw material cost to be included in determining the maximum f. o. b. factory price and it further provides a restriction to prevent unwarranted and unjustifiable cost increases.

(c) Increases in all other Costs.

After lengthy consultation with representatives of the canning industry and careful analysis of the difference between production costs in 1941 and production costs in 1942, the Price Administrator has determined that the maximum price for canned vegetables should include an allowance for increases other than increased raw product costs, to insure equitable returns from the sale of canned vegetables to the canner. If no such allowance were provided for in the accompanying Regulation, the canner would not have the incentive to operate at maximum capacity and the distributors of canned vegetables would receive an undue benefit, because the burden of absorbing these increases would be forced upon the canner only and not shared throughout the distributive system. Table IV which is attached hereto, shows the increases in cost to the canner, excluding raw product increases for the year 1942 over 1941. These figures are averages which were obtained from the figures submitted by representative canners, cost studies, and consultation with the industry. The items taken into consideration in arriving at this estimated percentage include only these essential to production and do not include such items as increased taxes, depreciation of fixed assets and amortization of debts. It should be noted that the 8 per cent figure which is allowed to be added to the weighted average price f. o. b. factory in 1941, does not represent average or maximum increases in all costs other than the raw product costs, but allows the canner a reasonable amount to compensate him for such increased costs. It enables the canner to proceed upon full production of canned vegetables.

Table IV shows the items considered in making up the 8 per cent figure and the increase allowed in arriving at that figure.

3. Maximum Price Regulation No. 152 Is Consistent With Section 3(c) of the Emergency Price Control Act of 1942

Section 3(c) of the Emergency Price Control Act of 1942 provides as follows:

"No maximum price shall be established or maintained for any commodity processed or manufactured in whole or substantial part from any agricultural commodity below a price which will reflect to producers of such agricultural commodity a price for such agricultural commodity equal to the highest price therefor specified in subsection (a)."

The maximum prices established by the accompanying Regulation will reflect to producers of the raw agricultural commodities from which canned vegetables are processed, prices which are equal to or in excess of the highest of the standards set forth in Section 3(a) of the Emergency Price Control Act of 1942. Prior to May 4, 1942 the average prices on the open market and the average prices paid or contracted to be paid by canners to growers had reached or exceeded the highest of the four standards of Section 3(a). The maximum prices established by the accompanying Regulation recognize all of the increases paid by canners to growers up to May 4, 1942 and will therefore reflect prices which equal or exceed the highest of the four standards of Section 3(a). The following examples include the major vegetable crops:

The national average price on the open market and the average price which canners of tomatoes had paid or agreed to pay growers prior to May 4, 1942 was \$19.00 per ton, whereas the highest price under Section 3(a), 110 per cent of parity, is \$15.99 per ton. For peas, the national average price on the open market and the average price which canners of peas had paid or agreed to pay growers prior to May 4, 1942 was \$66.00 per ton, whereas the highest price under Section 3(a), 110 per cent of parity, is \$61.34 per ton. The national average price for corn on the open market and the average price which canners had paid or agreed to pay growers prior to May 4, 1942 was \$15.00 per ton, whereas the highest price under Section 3(a), 110 per cent of parity, is \$14.59 per ton. For spinach, the national average price on the open market and the average price which canners had paid or agreed to pay growers prior to May 4, 1942 was \$36.00 per ton, whereas the highest price under Section 3(a), 110 per cent of parity, is

\$22.05 per ton. These examples illustrate Section 3(a) prices as compared to actual prices paid or contracted to be paid prior to May 4, 1942. The rest of the vegetable crops follow in the same general pattern.

Conclusion

Due consideration to the speculative fluctuations and increases in cost of production and general profits earned by the canners of canned vegetables during the year 1941, supports the conclusion that the maximum prices established by Maximum Price Regulation No. 152 are generally fair and equitable to canners.

Issued this 23d day of May, 1942.

LEON HENDERSON,
Administrator.

TABLE I.—Monthly Average F.O.B. Factory Prices for Major Canned Vegetables (First Month of 1941 Season Thru March 1942)

| Date | Snap Beans | | Sweet Corn | | Alaska Peas | |
|--------------------|----------------|----------------|------------------|----------------|-----------------|----------------|
| | St. Cut, Green | | St. White, Crenm | | Ex. St. 3 Sieve | |
| | Eastern States | Central States | Eastern States | Central States | Eastern States | Central States |
| 1941 | 24/2's | 24/2's | 24/2's | 24/2's | 24/2's | 24/2's |
| June | | | | | \$2.12 | \$2.00 |
| July | \$1.58 | \$1.50 | | | 2.16 | 2.24 |
| August | 1.84 | 1.70 | \$1.64 | \$1.70 | 2.16 | 2.24 |
| September | 1.86 | 1.68 | 1.70 | 1.70 | 2.16 | 2.24 |
| October | 2.04 | 2.10 | 1.78 | 1.80 | 2.16 | 2.24 |
| November | 2.20 | 2.40 | 1.84 | 1.82 | 2.22 | 2.36 |
| December | 2.20 | 2.16 | 1.82 | 1.84 | 2.28 | 2.40 |
| 1942 | | | | | | |
| January | 2.20 | 2.20 | 1.78 | 1.84 | 2.44 | 2.38 |
| February | 2.20 | 2.20 | 1.96 | 1.84 | 2.50 | 2.50 |
| March | 2.40 | | 1.94 | | | |
| Per cent change... | +51.9 | +46.7 | +18.3 | +15.0 | +17.0 | +25.0 |

(March prices over 1st month of 1941 pack)

| Date | Tomatoes Standard | | | Tomato Juice | | |
|--------------------|-------------------|----------------|----------------|----------------|----------------|----------------|
| | Eastern States | Central States | W.Coast States | Eastern States | Central States | W.Coast States |
| | 24/2's | 24/2's | 24/2's | 12/3cy. | 6/10's | 6/10's |
| 1941 | | | | | | |
| June | | | | | | |
| July | \$1.58 | \$1.56 | | \$1.56 | \$1.56 | Nom. |
| August | 1.80 | 1.58 | \$1.80 | 1.58 | 1.50 | Nom. |
| September | 1.84 | 1.60 | 2.00 | 1.58 | 1.50 | 1.60 |
| October | 1.68 | 1.70 | 2.02 | 1.66 | 1.68 | 1.66 |
| November | 1.70 | 1.80 | 2.10 | 1.77 | 1.78 | 1.81 |
| December | 1.72 | 1.88 | 2.10 | 1.73 | 1.79 | 1.81 |
| 1942 | | | | | | |
| January | 1.94 | 1.98 | 2.10 | 1.78 | 1.78 | 1.81 |
| February | 2.14 | 2.20 | 2.10 | 1.80 | 1.79 | 1.82 |
| March | 2.20 | 2.40 | 2.08 | 1.80 | 1.86 | 1.81 |
| Per cent change... | +30.2 | +53.8 | +30.0 | +15.4 | +19.3 | (*) +25.0 |

(March prices over 1st month of 1941 pack)

* No quotations for first month of pack.
Source: Agricultural Marketing Administration.

TABLE II.—Estimated Increased Cost, 1942 Over 1941 for the Major Canning Vegetables

| Commodity | 1941 Season * Average Price Per Ton | Average Price As of May 4, 1942 * | Increase 1942 Costs Over 1941 Costs Per Ton |
|------------------|---|--------------------------------------|---|
| | | | |
| Asparagus | \$106.55 | \$115.00-120.00 | \$8.45 - 13.45 |
| Lima Beans | 70.31 | 80.00 | 9.69 |
| Snap Beans | 61.49 | 65.00 | 3.51 |
| Beets | 12.71 | 15.00 | 2.29 |
| Carrots | 25.60 | 28.00 | 2.40 |
| Sweet Corn | 9.70 | 16.00 | 6.30 |
| Peas | 48.71 | 66.00 | 17.29 |
| Spinach | 21.35 | 36.00 | 14.65 |
| Tomatoes | 15.21 | 19.00 | 3.79 |

* Source: U. S. D. A.

* Source: Existing contract prices and market prices prevailing on or near May 4, 1942.

TABLE III.—Comparison—Estimated 1942 Grower Prices and the Highest of the Section 3 Prices for Canning Vegetables

| Commodity | Estimated 1942 Price | Minimum Limits Per Section 3 * | Type of Section 3 Price |
|------------------|----------------------------|--------------------------------------|-------------------------------|
| | | | |
| Asparagus | \$115.00-120.00 | \$106.55 | 1941 Season Average Price * |
| Lima Beans | 80.00 | 70.31 | " " " " |
| Snap Beans | 65.00 | 63.48 | 110% of Parity |
| Beets | 15.00 | 12.71 | 1941 Season Average Price |
| Sweet Corn | 16.00 | 14.59 | 110% of Parity |
| Peas | 66.00 | 61.34 | " " " " |
| Spinach | 36.00 | 22.06 | " " " " |
| Tomatoes | 19.00 | 15.49 | " " " " |

* Source: U. S. D. A.

* 1941 season average price used in lieu of October 15, 1941, or December 15, 1941 prices.

TABLE IV.—Estimated Increase in Factory Direct Costs Other Than Raw Material—Canned Vegetables

| Costs | Per Cent of * Selling Price (1) | Per Cent Increase ^b 1942 Over 1941 (2) | Increase As Per cent of Selling Price (1 x 2) |
|--|---------------------------------------|---|--|
| | | | |
| Labor | 11% | 25% | 2.75% |
| Cans and Containers | 25% | 9% | 2.25% |
| Sugar, Salt, and Condiments | 3% | 20% | .60% |
| Other Manufacturing and Wholesale Expense | 10% | 15% | 1.50% |
| | | | 8.1% |

* Estimated: Based on questionnaires sent out by OPA, information received during conferences with members of industry, and cost studies.

^b Estimated minimum increases in operating costs, 1942 over 1941.

Senate Defers Price Subsidy Proposal

In order to obtain immediate passage of a House bill increasing the lending powers of the Reconstruction Finance Corporation by \$5,000,000,000, the Senate on May 27 rejected amendments proposed by the Banking and Currency Committee that would have enabled RFC and the Commodity Credit Corporation to make subsidy payments with respect to commodities adversely affected by price ceilings. Further consideration of the subject of subsidy payments will be undertaken by the Senate Committee and their recommendation presented in new legislation.

Hearings Underway on Pea Standard Amendment

The scheduled hearing was begun May 25, before the Food and Drug Administration on the proposal to amend the standard of identity of canned peas to permit the addition of harmless alkaline substances to maintain acidity of the product at a point which will fix and retain the natural chlorophyll color of the peas. This method of treatment is known as "Blair process." The hearings will extend into next week. Testimony introduced by the industry related to the basic chemistry of the process, and testimony was presented by canners with reference to the attitude of canners, jobbers, and consumers toward peas canned by the "Blair process."

Shrimp Hearing Is Postponed to June 10

The Food and Drug Administration has postponed from June 3 to June 10 the public hearing scheduled for the purpose of receiving evidence upon which to promulgate standards of fill of container for canned shrimp. The hearing will commence at 10 a. m. in Room 1039, South Building, U. S. Department of Agriculture, Washington, D. C.

Production Requirements Plan Not Expected To Affect Canners' Present Use of P-115

Recently the War Production Board announced that its priorities system is being revised and that all companies will be required to use the Production Requirements Plan. This plan is to take the place of many of the P Series orders under which a number of industries are now operating.

The Production Requirements Plan provides for a working inventory of critical materials and is based on the quarterly requirements of each company. Applications for preference ratings are made quarterly on Form PD-25A. Interim requests are made on PD-25F (formerly PD-25X was used for companies having less than \$100,000 gross business).

The Production Requirements Plan is designed for use by manufacturers using critical materials in the building of machines and equipment. It is not intended that the Plan be used by companies using the finished machine. Thus the Production Requirements Plan is not suited to the priority requirements of the canning industry except insofar as canners buy material for building equipment in their own plant.

The Association understands that it is not contemplated to ask canners to qualify under the Production Requirements Plan and that the canning industry will continue to use P-115 until further notice.

RESERVATION ORDER M-86-A AMENDED

Clarifies Amount of Packs To Be Held; Eases Type, Style, Variety Restrictions

On May 25, 1942, the War Production Board issued an amended form of Conservation Order M-86-a, the order requiring reservation by the canner of specified percentages of his 1942 pack of canned fruits and vegetables. The text of the amended order is set forth below.

In general, the amended order makes two changes: First, it clarifies the amount of the pack of secondary products which is to be reserved. As originally issued, the order was susceptible to the interpretation that a canner would, under any circumstances, have to reserve for the Government the full amount in cases equal to the percentage specified in Table II. For example, the original order required the reservation of 100 per cent of the amount of carrots which a canner was permitted to pack by Order M-81, and by an official interpretation of M-81 he was allowed the necessary additional cans. Thus, a carrot packer who packed 50,000 cases in the base period would be permitted to pack an additional 50,000 cases, which he would hold under Order M-86-a. It was not clear, however, whether he would have to reserve this amount even though his pack was less than the total of 100,000 cases permitted by both orders. The new order makes it clear that the percentage to be reserved is a percentage of the "actual production" permitted by both Orders M-81 and M-86-a. Thus, if in the example given, the canner packed only 80,000 cases, he is required to hold only 40,000 under Order M-86-a.

Second, the type, style, and variety of fruits and vegetables to be withheld is no longer definitely limited, and it is provided that if the specified style of pack and grades are not packed, others may be substituted. Although the exact method for substitution has not been prescribed, the interrelation between specifications of grade and container size has been settled. The specified grades must be accorded primary consideration, and thereafter canners must follow the specified can sizes in reserving the pack of each grade. (See INFORMATION LETTER No. 881, May 2, 1942, p. 6979.) The amended order substitutes, as second preference grade, top standard, instead of standard, tomatoes, peas, and peaches. It also now expressly extends to pitted sweet cherries of either the light or dark variety, and to pineapple in tidbits (except salad and cocktail tidbits), or chunks.

Inasmuch as the specifications for boxes which accompanied amended M-86-a have not been changed, these are not reproduced and may be found in INFORMATION LETTER No. 876, March 28, 1942, p. 6926. The revised order and tables are as follows:

Order M-86-a (Section 1084.2) is hereby amended to read as follows:

(a) Pursuant to Order M-86, which this order supplements, it is hereby ordered that each canner shall set aside to be delivered for the requirements of Government agencies, pursuant to Order M-86, fruits and vegetables packed by him at any time in 1942 of the kinds and in the percentages set forth in Columns A and B of Tables I and II, attached hereto.

If the type, style, or variety of any such fruits or vegetables is described in Column C, such percentage shall be in the type, style and variety described, but other types, styles or varieties shall be substituted to the extent that those specified in Column C are not packed. Such percentage shall be made up of the first preference grade of such fruit or vegetable specified in Column E in can sizes in the order of preference specified in Column D, to the extent that the canner's production of such grade is sufficient therefor. To the extent that the canner's production of such grade is insufficient to meet such percentage, he shall set aside so much of his production of the second preference grade, if any, specified in Column F in can sizes in the order of preference specified in Column D as is sufficient to complete such percentage. If his production of the grades specified in both Column E and F is insufficient for such purpose, the canner shall set aside so much of his production of the third preference grade, if any, specified in Column G in can sizes in the order of preference specified in Column D as is sufficient to complete such percentage.

Any canner who is required to set aside canned goods pursuant to this order shall provide himself with the necessary materials to pack such canned goods in export boxes, which may be nailed wooden boxes, weatherproof solid fiber boxes, or wirebound wood boxes, at his option, according to specifications attached hereto, except that nailed wooden boxes and weatherproof solid fiber boxes shall not be wired or strapped except as specifically directed by the purchaser.

(b) Any canner who packed any of the products listed on Table II of this order in the calendar year of 1940 shall report by individual plant (if he operated more than one plant) to the Director of Industry Operations, showing for each such product the number of dozens of each can size packed. If a canner packed in 1941 any product listed in Table II which was not packed in 1940, he shall report the number of dozens of each can size packed in 1941. The report required by this paragraph shall be submitted in duplicate within 30 days following the effective date of this order.

on Form PD 342, Cannery Production Report (1940-1941).

(c) The report prescribed by paragraph (c) (2) of Order M-86 shall be given on Form PD 343—Seasonal Pack Report for 1942.

(d) The notice permitted by paragraph (c) (3) of Order M-86 may be given if any goods set aside in compliance with this order have not been purchased within 60 days after the

mailing or filing of the report with respect to such goods prescribed by paragraph (c) (2) of said Order M-86.

(e) This order, unless modified, amended or revoked, shall continue in effect until December 31, 1942.

Issued this 25th day of May, 1942.

J. S. KNOWLSON,
Director of Industry Operations.

TABLE I—PRIMARY PRODUCTS

The quota of any product listed in Column A to be set aside by any canner for the Government will be equal to the percentage shown in Column B applied to his total 1942 Pack of that product.

| A Canned fruits and vegetables | B Percentage of 1942 pack | C Description | D Can sizes preferred in order listed | E Grade | | |
|-----------------------------------|------------------------------|---|---|-------------------|---|-------------------|
| | | | | First preference | Second preference | Third preference |
| Fruit Cocktail..... | 23 | | Nos. 10-2½-2 | Choice | Fancy | |
| Peaches ¹ | 32 | Clings-Freestone, Halves-Sliced | Nos. 10-2½-2 | Choice | Top Standard Clings, only. ¹ | Fancy. |
| Pears..... | 31 | Bartlett halves | Nos. 10-2½-2 | Choice | Top Std. ¹ | Standard. |
| Asparagus..... | 30 | Culturally bleached, All Green | Nos. 10-2 | Fancy Cut. | Fancy Spear | |
| Beans, Lima..... | 25 | Fresh | Nos. 10-2 | Ext Std. | Fancy green | Std. fresh white. |
| Beans, String..... | 28 | Cut-Green, Wax Round, Flat | Nos. 10-2 | Ext Std. | Top Std. ¹ | Fancy. |
| Corn, Sweet..... | 23 | Yellow, White, Cream style, Whole Kernel | No. 2 Cream style and whole kernel, No. 10 whole kernel only. | Ext Std. | Fancy | Standard. |
| Peas..... | 26 | Alaska's 3 and 4 sieve, Sweet-3 and larger, ungraded. | Nos. 10-2 | Ext Std. | Top Std. ¹ | Fancy. |
| Tomatoes..... | 33 | | Nos. 10-2½-2 | Ext Std. | Top Std. ¹ | Fancy. |
| Tomato Catsup..... | 23 | | Nos. 10-14 oz. Glass and larger. | Fancy 25% solids. | Standard | |
| Tomato Juice..... | 15 | | Nos. 10-3 eyl (404 x 700) | Fancy | | |

¹ Top Standard means 70-74 inclusive as defined in terms of U. S. Grades.

² Except Freestone Peaches packed in California. (See Table II.)

TABLE II—SECONDARY PRODUCTS

The use of tinplate in packing these products is restricted by Tinplate Conservation Order M-81 as it may be amended from time to time. The quota to be set aside for the Government will be equal to the percentage shown in Column B applied to the actual production as permitted by Order M-81 and such quotas may be packed in addition to the pack limitation set by said Order M-81.

| A Canned fruits and vegetables | B Percentage as defined above | C Description | D Can sizes preferred in order listed | E Grade | | |
|-----------------------------------|----------------------------------|--|--|------------------|-----------------------|------------------|
| | | | | First preference | Second preference | Third preference |
| Apples..... | 58 | Heavy Pack | No. 10 | Standard | | |
| Applesauce..... | 32 | Fresh | Nos. 10-2 | Fancy | Standard | |
| Apricots..... | 50 | Halves unpeeled | Nos. 10-2½ | Choice | Top Std. ¹ | Fancy. |
| Cherries, RSF..... | 21 | Red Pitted (water pack) | Nos. 10-2 | Standard | | |
| Cherries, Sweet..... | 34 | Light, Dark, Pitted, Unpitted | Nos. 10-2½-2 | Choice | Top Std. ¹ | Fancy. |
| Peaches..... | 26 | Freestone (Calif. only) Halves-sliced | Nos. 10-2½-2 | Choice | Fancy | |
| Pineapple..... | 26 | Sliced, Crushed, Tidbits (except salad and cocktail tidbits), Chunks | Nos. 10-2½-2 | Fancy | Standard | |
| Prunes, Fresh..... | 25 | Italian | Nos. 10-2½ | Choice | Fancy | |
| Beets..... | 60 | Cut-Quartered-Sliced-Diced | Nos. 10-2½-2 | Fancy | Top Std. ² | |
| Carrots..... | 100 | Diced | Nos. 10-2½-2 | Fancy | Top Std. ² | |
| Pumpkin..... | 65 | | No. 2½ | Fancy | Top Std. ² | |
| Spinach..... | 58 | | Nos. 10-2½-2 | Fancy | Top Std. ² | |

¹ Top Standard means 70-74 inclusive as defined in terms of U. S. Grades.

² Top Standard means 80-84 inclusive as defined in terms of U. S. Grades.

LABEL STATEMENT OF SYRUPS

FDA Clarifies Requirements Specified in Canned Fruit Standards Effective June 1

In response to a request by Association Counsel addressed to the Food and Drug Administration, that agency has made clear the precise technical basis for deferring the requirement that the label disclose the packing medium used in standardized canned fruits. (See INFORMATION LETTER No. 882, May 11, 1942, page 6991.)

Pointing out the existing confusion among fruit canners, distributors, and label manufacturers, the Food and Drug Administration was asked to rule specifically (1) as to when the old regulation would cease to be effective and the new cut-out Brix requirements become effective; (2) whether the suggested interpretation that no label disclosure would be required between June 1, 1942, and February 26, 1943, was correct; and (3) whether the advancing of the effective date for the new type of label disclosure would permit the use of old labels until such date. The reply of P. D. Cronin, assistant general counsel of the agency, follows:

Reference is made to your letter dated May 19, 1942, relating to the definitions and standards of identity for canned apricots, canned cherries, canned peaches, and canned pears. You raise several questions involving interpretation of the Administrator's order dated February 26, 1942, promulgating the amended and revised regulations fixing and establishing definitions and standards of identity for the fruits named and its effect on such existing standards.

The Administrator's order amending and revising the "old" regulations does not become effective until June 1, 1942. It follows that all provisions of those regulations, including the provisions relating to the labeling of optional packing media, remain in effect until that date. Your attention is directed, however, to the communication from the Secretary of Agriculture to the Attorney General, dated June 8, 1940, authorizing the United States Attorney to apprise the Circuit Court of Appeals that it was the Secretary's intention not to enforce such regulations should the Court allow withdrawal of the record for the purpose of further proceedings.

The only provisions of the regulations promulgated by the order of February 26, 1942, which do not become effective on June 1, 1942, are those referred to in the following exception contained in the order:

"that, in so far as it relates to any of the optional packing media numbered 3 to 10, inclusive, the provision of each regulation that the label shall bear the name whereby the optional packing medium used is designated in said regulations shall become effective one year from the date hereof."

Therefore, from June 1, 1942, to February 26, 1943, there is no provision in effect which requires that the optional packing media numbered 3 to 10, inclusive, be named on the label. However, should any of such optional packing media be named on the label, the provisions of the amended and revised regulations as promulgated must be complied with. The provisions of the exception quoted were included in the order solely for the purpose of allowing a reasonable time for adjustment to the labeling requirements of those regulations. They do not affect any of the provisions relating to the identity of the packing media or permit any deviation from the standard in that respect. Consequently, any labeling with respect to packing media is required to comply with pertinent provisions of the Act and the provisions of the regulations.

I hope these comments will serve to clarify the questions which you state have arisen among interested parties.

It will be observed from the foregoing letter that up to June 1, 1942, the Food and Drug Administration has stated its intention not to enforce the old regulations concerning label disclosure of packing medium. After June 1, 1942, the old regulations cease to exist, and a fruit canner can elect to comply with the label disclosures specified in the new fruit standards (see INFORMATION LETTER N6873, March 7, 1942, pp. 6889-93), or to refrain from making any label disclosure. After June 1, 1942 he cannot use his old labels showing a "Medium Syrup," and if old labels showing "Light" or "Heavy" are used, the product must conform to the cut-out Brix ranges specified in the new standards of identity.

It will be observed that the Agency's ruling specifies that even though the labeling requirements are deferred, this does not

"affect any of the provisions relating to the identity of the packing media or permit any deviation from the standard in that respect."

This language preserves the technical distinction between the ingredient which may be used in the standardized fruit, i. e. the particular syrups of specific densities, and the label disclosure of such ingredients. The standards of identity, however, specify four ranges of density, running from slightly sweetened water to extra heavy syrups, which, taken together, cover the entire working range. Thus the practical effect is that any syrup which is less than the maximum permissible density will necessarily be one of the syrups permitted in the standard. Since there is no requirement that the label show the particular syrup in the product, the practical effect of this ruling will be to permit a per case reduction of the sugar content and possibly afford a greater spread of the 90 per cent sugar allocation.

Attention must be called to the requirement that if label disclosure is made of any packing medium, the product must conform on the basis of the new regulations. Water packs and unsweetened juice packs must show these packing media on the label.

Export Box Requirement Is Reiterated

The War Production Board Containers Branch emphasizes that types of boxes other than those specified by Amendment No. 1 to Order M-86-a will not be allowed for this year's pack of canned fruits and vegetables. This requirement was first published in the March 28 INFORMATION LETTER.

It has come to the attention of the Branch that some canners, anticipating the availability of other types of boxes, have cancelled orders for boxes for the packing of the canned fruits and vegetables which the amended order requires to be set aside for the armed services.

The order specifies that either wire-bound, nailed wooden, or waterproof solid fibre boxes, made in accordance with the terms of the order, must be used for the packing of such canned fruits and vegetables.

Full specifications for these required boxes appeared in the INFORMATION LETTER for April 28.

Since it is not possible to determine quickly the suitability of any new type of container for these purposes, the Branch is again urging canners to cover their requirements for the three types of permitted boxes as soon as possible.

Canned Salmon Industry Committee Named

The Bureau of Industry Advisory Committees, of the War Production Board, has announced the formation of the Canned Salmon Subcommittee of the Fish Industry Advisory Committee. The government presiding officer is Lawrence T. Hopkinson. Following is the membership of the subcommittee:

Aubin Barthold, Alaska Packers Ass'n., San Francisco, Calif.; E. F. Brennan, P. E. Harris & Co., Seattle, Wash.; William Calvert, Jr., San Juan Fishing and Packing Co., Seattle, Wash.; Victor H. Elfendahl, Alaska Pacific Salmon Co., Seattle, Wash.; Laurence Freeburn, Pyramid Packing Co., Inc., Seattle, Wash.; John A. Green, Pacific American Fisheries, Inc., South Bellingham, Wash.; Frank Lloyd, Ketchikan Packing Co., Seattle, Wash.; Thomas Sandoz, Columbia River Packers Ass'n., Astoria, Ore.; E. E. Willkie, Libby, McNeill & Libby, Chicago, Ill.; and A. W. Wittig, Shepard Point Packing Co., Seattle, Wash.

The subcommittee held its first meeting on May 26 and 27.

CANNED FISH RESERVED FOR GOVERNMENT

Entire 1942 Pack of Salmon, Sardines, Herring and Mackerel to be Set Aside

The War Production Board on May 26 ordered canners to set aside for the Government their entire 1942 pack of salmon, sardines, Atlantic herring, and mackerel. The purpose of the order is to assure ample supplies of these fish for the armed forces and Lend-lease.

The order, M-86-b, is a companion to the previously issued orders M-86 and M-86-a which required canners to set aside for the Government certain percentages of their 1942 packs of fruits and vegetables.

Full text of Orders M-86 and M-86-a and their required forms was published in the INFORMATION LETTER for March 14; Amendment No. 1, to M-86-a (covering shipping case requirements) was published in the April 18 LETTER, and Supplementary Order M-86-a, as amended May 25, appears elsewhere in this issue of the LETTER.

Lawrence Hopkinson, in charge of fishery products for WPB, said that Order M-86-b, does not mean that none of the 1942 pack of fish covered by the order will be available for civilians. He said the estimated 1942 salmon pack is 5,400,000 cases of which only about 2,500,000 cases are expected to be required this year for the armed forces and Lend-lease. He estimated that Lend-lease will require from 50 to 66 per cent of the 1942 pack of sardines, Atlantic herring and mackerel, probably leaving the balance for civilians. None of the canned sardines, herring and mackerel are to be set aside for the armed forces, provided there is an adequate supply of canned salmon.

"Because of uncertainty as to the supply and the demand it was thought best to require that the entire pack of these fish be set aside; then, if the full supply is not needed for military and Lend-lease requirements, it can be released for civilian purposes," Mr. Hopkinson said.

The order requires canners to set aside their entire pack of salmon, pilchard (including sardines), Atlantic sea herring and mackerel packed any time from March 1, 1942, to February 28, 1943.

A canner is required to make weekly reports of the quantity of fish he has canned. If the fish thus set aside have not been purchased by the Government within 30 days after the filing of the report, the canner may notify WPB that if they are not purchased within 30 days, he will no longer hold them set aside but will release them to the civilian market.

Mr. Hopkinson said that the Agricultural Marketing Administration will be the purchasing agency for the sardines, herring and mackerel. He said it has not been definitely decided what agency will purchase the salmon pack.

"It is not anticipated," Mr. Hopkinson said, "that in most cases canners will actually be required to hold their fish for 60 days, since purchasing can be accomplished in a much shorter time." Text of the order follows:

TITLE 32—NATIONAL DEFENSE

CHAPTER IX—WAR PRODUCTION BOARD; SUBCHAPTER B—DIVISION OF INDUSTRY OPERATIONS; PART 1084—CANNED FOODS

1084.3—Supplementary Order No. M-86-b

(a) Pursuant to Order M-86, which this order supplements, it is hereby ordered that each canner shall set aside to be delivered for the requirements of government agencies, his entire pack of the following fish packed by him at any time from March 1, 1942 to February 28, 1943 (aside from such part of his pack as may have been both sold and delivered to others prior to the effective date of this supplementary order):

Salmon:

Red, sockeye, or blueback (*Oncorhynchus nerka*);
Pink (*Oncorhynchus gorbuscha*);
Silver, silverside, medium red, or coho (*Oncorhynchus kisutch*);
Chum or keta (*Oncorhynchus keta*);
King, chinook or spring (*Oncorhynchus tshawytscha*);
Steelhead, or steelhead trout (*Salmo irideus* and *S. clarki*, sometimes called *S. Gairdneri*).

Pilchard (*Sardinia caerulea*), by whatever name known, including sardines.

Sea Herring:

Atlantic (*Clupea harengus*), by whatever name known, including sardines.

Mackerel:

Atlantic (*Scomber scombrus*);
Pacific (*Pneumatophorus japonicus diego*).

(b) Directions as to styles, types of pack, can sizes, labeling, boxes, and strapping may be given by the Director of Industry Operations from time to time to any canner packing the fish specified in paragraph (a).

(c) The report prescribed by paragraph (c) (2) of Order M-86 shall be filed weekly within three days after the close of each calendar week on Form PD-495, "Canned Fish: Weekly Pack Report." A report, on the same form, shall be filed within 15 days after the completion of each canner's seasonal pack, covering the entire amount of such pack. The notice permitted by paragraph (c) (3) of Order M-86 may be given if any goods set aside in compliance with this order have not been purchased within 30 days after the mailing or filing of the report with respect to such goods prescribed by paragraph (c) (2) of said Order M-86, or within 30 days after the arrival of such goods in the Continental United States, whichever is later.

Issued this 26th day of May, 1942.

J. S. KNOWLSON,
Director of Industry Operations.

Fieldmen's Gasoline Memo Favorably Received

In response to the Association's recent memorandum presenting the functions and gasoline requirements of canners' fieldmen, the Fuel Rationing Branch of the Office of Price Administration has indicated that it will make every effort not to interfere with services so essential to food production. It was stated that the type of information assembled in the memorandum was most valuable to the Branch in its task of distributing the burden of the present motor transport emergency.

EXPANSION OF VEGETABLE DEHYDRATION

USDA Offers Assistance to Canners and Other Processors on Plant Conversion

The Department of Agriculture has announced a program to encourage expansion of vegetable dehydration facilities to meet increased needs for Lend-lease, military purposes, and civilian consumption and to help alleviate the increasingly serious situation with respect to containers and transportation.

Under the program, existing vegetable dehydrators will be invited to expand their present facilities and canners and processors with experience in food processing will be assisted wherever necessary in converting part or all of their plants for dehydration operations. Processors participating in the program will be approved by the Department of Agriculture. Plans have been made to furnish technical assistance to firms newly entering the dehydration field to help them gain experience. The program will be worked out in cooperation with the War Department and the War Production Board.

As a practical means of increasing dehydration facilities the Agricultural Marketing Administration will contract with processors meeting the requirements of the program to purchase that part of their dehydrated vegetable production that is needed to meet domestic, Lend-lease and military requirements, on both a current and future delivery basis. Purchases will be made on the basis of specifications prepared by the Department of Agriculture.

The Department also will assist in seeking priorities for materials needed to expand or convert existing facilities for firms selected to participate in the program. Conversion of existing food processing facilities to production of dehydrated commodities will be accomplished with a minimum use of critical materials.

Through the program, increased production of dehydrated white and sweet potatoes, onions, cabbage, carrots, beets, and rutabagas will be sought.

Substantial savings in shipping weight and space are expected to result from the dehydration program. Generally speaking, reduction of weight through dehydration results in about 10 pounds of fresh vegetables equaling one pound of the dehydrated product. Volume reduction is about 4 to 1.

Plants now engaged in vegetable dehydration or other processors of perishable foods interested in the expansion program can obtain, upon request to the Fruit and Vegetable Branch of the Agricultural Marketing Administration, U. S. Department of Agriculture, Washington, D. C., application forms to participate in the program.

Consideration of processors applications will take into account the following basic points:

1. Location of facilities with respect to war strategy.
2. Suitability of existing plants for expansion or conversion to vegetable dehydration work.
3. Availability of management, and labor experienced in dehydration or other food processing work.
4. Possibility of converting existing food processing facilities to vegetable dehydration work with the least possible use of critical materials.
5. Availability of ample supplies of fresh vegetables.
6. Availability of labor for production and harvesting of vegetables.
7. Ability of plant operators to arrange financing of the expansion or conversion of existing facilities to vegetable dehydration work.
8. Geographical and climatic conditions affecting the suitability of vegetables for dehydration.

AMA Standards for Grades of Canned Tomatoes

Revised "U. S. Standards for Grades of Canned Tomatoes," have been promulgated by the Agricultural Marketing Administration of the Department of Agriculture, and are effective June 1.

These standards differ from previous AMA (formerly AMS) standards in several particulars. The phraseology has been changed in many places, and changes appear also in the relative weights of different factors.

Of special significance is a final paragraph of the present revision covering tolerances for certification of officially drawn samples. This paragraph reads as follows:

The score for drained weights of all containers that have been officially drawn and which represent a specific lot of canned tomatoes shall be based upon the score applicable to the average drained weight of all the containers examined.

The grade will then be determined by averaging the score of all containers, provided not more than one-sixth of the containers fall in some respect to meet the requirements of the grade indicated by the average score. However, none of the containers may fall more than four points below the minimum score of the grade indicated by the average score, and if one-sixth or less of the containers fail to meet the requirements of the indicated grade by reason of a limiting rule, the average score of all containers for the limiting factor must be within the range for the grade indicated by the average total score.

The above tolerances do not apply if any container falls below any applicable standard of quality promulgated under the Federal Food, Drug, and Cosmetic Act.

British Stimulate Tomato Growing

A new order relating to commercial greenhouses in Great Britain, as reported in the *Market Growers Journal*, stipulates that all glass houses used for producing crops for sale must be wholly devoted to tomatoes for at least six months of the year, except they be planted to permanent crops. The latter, however, must be reduced to 25 per cent of pre-war plantings.

Transportation Efficiency for Cannery Employees

Many cannery workers will have a serious transportation problem to meet in getting their seasonal workers to and from the cannery. The steps necessary to achieve the greatest possible use of existing local transportation facilities are discussed in a recent manual published by the Office of Defense Transportation, which points out that it is just as necessary to assure the flow of war workers to and from the thousands of industrial plants all over the country as it is to assure the flow of raw materials to those plants.

As reported in the May 2 INFORMATION LETTER, the methods suggested for the over-all problem include, among others, staggering business, school, and working hours; making more efficient use of private automobiles through group riding; and improving regulation of street traffic to make possible more efficient movements of passenger vehicles.

Cannery workers in rural areas who draw their labor from a wide radius may have to develop additional methods for meeting their individual and local problems. No one plan can supply the answer to the problems of all locations, but the manual outlines basic plans which can be enlarged or changed to suit any particular situation.

The manual has been divided into three main sections. The first describes the proposed organization set-up to put into effect a comprehensive community plan. The second deals with staggered hours, while the third is devoted to group riding. The possibilities in group riding are perhaps most applicable to the cannery's problem, and procedures are outlined in this manual which may be made the basis for local programs.

The Association will be glad to send a copy of this manual to any cannery worker who wishes one.

WPB Committee to Direct Transportation

Formation of a Transportation Committee to obtain information from the various divisions of the War Production Board as to anticipated transportation requirements and to make recommendations with respect to preferential movement of traffic within the United States was announced May 26 by J. S. Knowlson, Director of Industry Operations.

Chairman of the committee is Edgar B. Stern, of New Orleans, La., who since last October has been WPB representative to the Board of Economic Warfare.

Functions of the Committee, as outlined in an administrative order issued by the Director, are as follows:

Obtain from appropriate divisions of the War Production Board estimates of probable transportation requirements and, after correlation, advise the Office of Defense Transportation of these estimates in order that plans may be formulated by ODT to handle such requirements.

Make recommendations to the Director of Industry Operations concerning the issuance of certifications, instructions, and directives covering preferential movement of such materials as conditions require; or, in the event of actual or anticipated acute transportation shortages, recommend programs for the curtailment or elimination of transportation for certain traffic not considered essential to the war effort.

Provide a clearing house for all domestic transportation problems involving WPB, and problems between WPB and ODT.

Return Truck Load Order Postponed

The Office of Defense Transportation has postponed from June 1 to July 1 the effective date of the provisions of the order regulating motor truck carriers which requires a 75 per cent return load on trucks used in over-the-road operations. The reason given for the postponement is to permit truck operators a longer period in which to work out programs for return loads. As reported in the May 16 INFORMATION LETTER, the Association has made an appeal to ODT requesting modification of the regulations to permit the normal use of cannery trucks for hauling raw products. Postponement of the effective date of the order will permit more time for consideration of this appeal.

Latest Developments in Group Warehousing Plan

Further development of the group warehousing plan of the Office of Defense Transportation, which was outlined in the INFORMATION LETTER for April 11, was revealed on May 24 by the announcement that a group warehousing contract has been signed with the Federal Emergency Warehouse Association of Philadelphia. The plan is expected ultimately to embrace 40 of the nation's largest cities. Merchandise warehouse operators in Philadelphia have pooled their facilities to make available 400,000 square feet of storage space to meet government needs.

Whenever the need for additional government storage space becomes apparent in any one community, the local association will be asked to make an immediate survey of all buildings which might be available for storage purposes. These buildings will include the idle plant facilities of small business men who have ceased manufacturing non-essential domestic items and who, for one reason or another, have not converted their facilities to war production.

No additional buildings will be considered or acquired until they are needed. Offers of facilities by owners of buildings will be handled only through the local warehousing associations.

New York, Chicago, and New Orleans are next on the list for establishment of the Federal warehousing associations.

Truitt Named Chief of Marketing Laws Unit

Paul T. Truitt has been named Chief of the Marketing Laws Unit of the Department of Commerce, it is announced. He succeeds Augustus H. Martin, who has entered active service as a major in the Transport Division of the U. S. Army. Mr. Truitt has been assistant chief of the unit since it was created in 1941.

Banks Collings in New Position

H. Banks Collings, who through his service with the Fruits and Vegetables Division of the Surplus Marketing Administration is well known to cannery workers, has been designated as Assistant Chief of the Purchase Branch of the Agricultural Marketing Administration in charge of field operations.

REVISED CANNED VEGETABLE CEILINGS ESTABLISHED

(Continued from page 7019)

and, particularly, the impact which increased prices for one vegetable has upon raw material prices for other canned vegetables. The Statement concludes that

"It is obvious that canners could not sell their customers at the weighted average price for the 1941 pack at present, and still absorb the increases in the raw agricultural crop."

The Statement makes it clear that only those increases in raw material costs which were reflected in contracts as of May 4, 1942, may be recognized in the new canners' ceiling prices. Of considerable significance is the finding that grower prices for canning vegetables as of May 4, 1942, are equal to and in many cases exceed 110 per cent of parity and are higher than the average prices for such vegetables during the period July, 1919, to June, 1929. Although prepared solely for price control purposes, this governmental Statement demonstrates clearly that the tremendous growth of the vegetable canning industry over the past decade has been accompanied by increasing returns to growers. Finally, there is a recognition that the 8 per cent allowed for other increased costs "does not represent average or maximum increases" but simply "allows the canner a reasonable amount to compensate him for such increased costs."

The Price Regulation

Any administrative regulation which controls pricing in as large and varied an industry as vegetable canning carried on in 40 States is necessarily a statement of operative general rules. Detailed application must be worked out in the use of these rules in the regulation of the thousands of transactions which they cover. Nevertheless, the Maximum Price Regulation No. 152 is extraordinarily explicit and appears to have been drafted in the light of a realistic understanding of the problems confronting the vegetable canner in determining the numerous individual price ceilings which the regulation prescribes. Undoubtedly, any necessary clarifying interpretations will be issued by OPA. Any unofficial explanation of the Regulation or suggested interpretation of its provisions at this time must be regarded as preliminary. In an effort to assist canners in applying the Regulation to their own operations, the following explanatory comment has been prepared in the light of the Statement of Considerations and the specific terms of the order. It is recommended that canners familiarize themselves with the text of the Regulation, which is reprinted in full on pages 7023, 7024 in order that the references to particular sections contained in the following discussion may be clear.

Scope and General Theory

The new price regulation is applicable only to the 1942 pack of the 35 canned vegetables or groups of vegetables specified in subsection (a) (3) of Section 1341.30. Goods packed in 1941 are still subject to the General Maximum Price Regulation of April 28, 1942. See INFORMATION LETTER, for May 2. But for the 1942 pack of the listed products, the new regulation is exclusive. No election is permitted in the use of the price ceilings prescribed as against the March ceilings in the General Maximum Price Regulation.

If a particular product is listed, the canner must use the method prescribed in the new regulation.

The price to be charged in any sale, whether spot or future, of the specified products which is made on or after May 25, 1942, cannot be higher than the ceiling price established. (See Section 1341.21(a)). Moreover, the prohibition against higher prices applies to the buyer as well as to the canner. (Section 1341.21(b)). Offering or soliciting at higher prices, even though no sale is consummated, also is forbidden, and any direct or indirect attempt to charge a higher price or in any way to evade the specified price ceiling is specifically covered. (Section 1341.25).

The ceilings provided are not only individual to each canner but are likewise to be applied by the specific kind, grade, and container size of each vegetable packed. It is a fundamental premise of the order, carried over from the General Maximum Price Regulation, that each particular style of pack, grade, and can size, has its own price ceiling independently determined. The ceiling for each must be separately worked out under this Regulation. The price for a particular grade may not be determined by reference to established differentials with other grades or can sizes or styles of pack. Consequently, if the particular price ceiling cannot be determined under Section 1341.22(a)-(e), it must be determined under subsection (d) of that section. This represents a change from the methods of pricing permitted under the Temporary Freezing Order. (See INFORMATION LETTER No. 873, March 7, 1942, page 6879.) Thus, in working out the application of this Regulation to the pricing of particular products, it is necessary to apply the order as a whole to each style of pack, grade, and can size separately.

If a particular canned vegetable, such as canned squash or pumpkin, is not covered by this Regulation, then the General Maximum Price Regulation of April 28, 1942, is fully applicable. If a canner packs a product new to the industry, and one necessarily not listed in Section 1341.30(a) (3), the General Maximum Price Regulation is likewise applicable. It should be noted, however, that the definition of "canned vegetables" does include the listed products when packed in glass or any other material as well as when packed in tin. Hence where any of the specified products formerly packed in tin are put up in glass, the new regulation is fully applicable.

The general theory is that the ceiling prices for each kind, grade and container size of the listed vegetables are to be calculated by adding together three factors, each of which must be determined separately. The first and the third warrant careful analysis. The second is relatively simple to apply. The ceiling prices, specified in Section 1341.22, are to be determined on the basis of *f.o.b. factory prices*. Thus where a canner has been selling freight prepaid, or freight wholly or partially allowed, he must in making his price calculations reduce his 1941 and 1942 prices to an *f.o.b. factory* basis. Moreover, he cannot change his customary freight allowances unless such change results in a lower 1942 price. (Section 1341.22 (a) and (f)). (References throughout the remainder of this part of the discussion will be to subsections of Section 1341.21.) Moreover, the price ceilings and each of the calculations must be made on a per dozen basis.

Each of the three factors entering into the calculation of the ceiling price may be separately examined.

1941 Weighted Average Price

The first step is to determine the weighted average price for the particular style of pack, can size, and grade during the base period which is the first 60 days after the beginning of the 1941 pack. (Subsection (b)(1)). In making such calculation, the canner is directed to disregard all delivery dates. The controlling fact is a firm contract entered into within 60 days after the beginning of the 1941 pack of the particular vegetable. A firm contract means a contract for a definite quantity of goods at a specified price. It is immaterial whether the particular 1941 sale was a spot sale or a future if it was in fact made or the sales contract executed during the controlling period. Sales "Subject-Approval-Price", however, are in legal effect mere options, and they should not be included unless the price was subsequently definitely agreed upon within the 60-day period. There are also excluded, by the specific terms of the Regulation, any sales made during the controlling 60-day period in 1941 to the armed forces of the United States which means only to the Army, Navy and Marine Corps. Sales to the FSCC presumably should be included. Since delivery dates are to be disregarded, any future contracts entered into prior to the 60-day period should not be included even though the goods were packed or delivered during such period.

The included sales are taken together and the total gross price charged for all sales of the particular kind, grade and can size is divided by the total number of dozen. The price charged means the gross price specified in the contract or invoice. Discounts should be disregarded, and brokerage excluded. The controlling price is the price specified in the contract entered into during the 60-day period, irrespective of whether this price was later increased or whether for any reason delivery was later pro rated or even never made. The resulting price per dozen is the weighted average price which is to be used as one factor in determining the 1942 ceiling price for the particular product.

If during the controlling 60-day period in 1941 a canner did not make any sales of the particular kind, grade or can size of the canned vegetable concerned, he obviously will be unable to determine from his own experience the weighted average price per dozen of that item. The question then arises whether, where this first cost factor cannot be determined for the particular item, the canner may supply it by taking the 1941 weighted average price per dozen of his most closely competitive canner and then use this figure as the basis for adding his own actual increased raw material costs, or whether where this historical 1941 weighted average price for the particular item cannot be supplied, the canner must take the completely calculated price ceiling of the most closely competitive canner. Obviously, the relation between raw agricultural commodity costs both in 1941 and 1942 and the weighted average prices per dozen in these two years will vary among canners. Moreover, as will be later seen, many canners who have complete 1941 price experience cannot make comparisons of raw material costs between 1941 and 1942 because they either grow their own crops, are cooperatively organized, or purchase exclusively in the open market.

Although the new price regulation is reasonably clear in most respects, it appears to be somewhat deficient on this point. Subsection (d) of Section 1341.22 is possibly sus-

ceptible of two interpretations. It may mean that in determining his ceiling prices, the canner who does not have the 1941 price experience because within the limited 60-day period he did not sell the particular item, may use his closest competitor's 1941 average price per dozen as the basis for further calculations. In such case he would apply his own actual 1942 raw material increases to this 1941 price per dozen. (See Subsection (b)(2).) Likewise, there may be canners who have adequate price data for the 60 days in 1942, but because they are organized as cooperatives or because they grow their own raw material, or purchase exclusively in the open market, or make their grower contracts after May 4, 1942, cannot determine the actual increased raw material costs in the manner prescribed by the regulation. In such cases, under the interpretation suggested these canners could use their own 1941 weighted average price per dozen and for the third factor use the comparative actual increased raw material costs prevailing in the same growing area.

On the other hand, if subsection (d) must be interpreted to mean that if either the first or the third cost factor cannot be supplied, then, the canner must take his competitor's 1942 price per dozen, as finally computed according to the regulation, the number of instances in which for particular products the competitor's complete price ceiling will have to be used will be increased. On its face, subsection (d) probably means that whenever any deficiency in information is found and any of the required calculations cannot be made, then the competitor's complete price ceiling must be used. This problem will undoubtedly require early consideration by OPA and administrative interpretation or possibly an amendment to the regulation will be necessary. For the task of computing price ceilings and the enforcement of the regulation will be tremendously complicated unless the individual 1941 price basis or the actual raw material cost increases can be separately determined. As will be seen below, the concept of "the most closely competitive canner" is not particularly precise and that phrase is not even defined in the new regulation. In the light of the considerations set forth in the accompanying Statement, it is difficult to believe that an interpretation which will result in price dislocation among the various products packed by an individual canner,—depending upon the time at which 1941 sales were made or upon the method of growing or acquiring raw materials—will be put into effect. (Compare the later discussion of raw material increases.)

In view of the uncertainties of interpretation, however, those canners who during the controlling 60-day period in 1941 did not make any sales of a particular item might consider determining the price ceiling for that product on both bases. They might use the weighted average price per dozen, during the controlling 60-day period, of the most closely competitive canner of that product, and apply the remainder of the regulation against such figure by adding the prescribed 8 per cent and the formula for actual raw material cost increases (as explained below). As a separate computation, they might also determine the price ceiling, as completely calculated under the regulation, of the most closely competitive canner of that product. If difficulties of computation arise, particularly since the regulation requires that price ceilings be computed and reported by July 1, 1942, or if gross disparities of price or disloca-

tions among sizes and grades of the same product result, the problem should be immediately called to the attention of OPA.

Percentage Covering Increased Costs Other Than Raw Agricultural Commodity Costs

The weighted average price per dozen so obtained is increased by 8 per cent. The purpose of this flat increase is fully explained in Paragraph 2(c) of the Statement of Considerations. The 8 per cent is applied uniformly to all kinds, grades and can sizes of the specified canned vegetables. It will be observed that this factor is a constant once the weighted average price per dozen of the particular kind, grade, and can size is determined.

Actual Increase In the Cost of the Raw Agricultural Commodity

Probably most difficult of application is the third price factor which permits the price per dozen to be further increased by the "actual increase in the cost of the raw agricultural commodity." The method to be used is set forth in subsection (b) (2). For administrative reasons, the determination of increases in the cost of raw materials is directed to be made "irrespective of grade." The canner is directed first to determine for all grades of each can size in each style of pack, the number of dozen yielded by each ton or other unit of raw vegetables purchased in 1941. By dividing the total amount paid for raw material utilized for the style of pack in the particular can size by the total number of tons or other units used in packing that style and can size, there should be calculated the weighted average cost per dozen of the raw vegetable. Necessarily, where raw material received in 1941 was commingled for preliminary handling and later divided for packing into different size containers or into different grades or styles of pack, computations based upon reasonable allocations will have to be made.

The raw material cost per dozen for each style of pack and container size in 1941 is used as the basis of comparison with 1942 costs of raw material. It is obviously necessary that this must be done on the basis of an assumption that in 1942 there will be the same yields among container sizes, styles of pack, and grades packed as was obtained in 1941 from each ton or other unit of raw material. While in some cases this assumption may turn out to be unwarranted, it appears to be the basis prescribed in the Regulation for determining the amount of increase which may be added to the weighted price per dozen previously determined.

The 1942 ton or other unit price for raw material must be determined on the basis of prices paid or contracted to be paid up to and including May 4, 1942. Only prices actually paid or firmly contracted to be paid on or before that day can be taken into account. Contracts made at higher prices after that date will not permit further adjustment. (See the discussion of grower prices in Paragraph 2(b) of the Statement of Considerations.)

Where the canner contracts for a portion of the raw commodity and grows the rest, he may take as his 1942 raw agricultural commodity cost for his entire pack the price paid to growers on those contracts entered into on or before May 4, 1942. Where a canner contracts a portion of his acre-

age and purchases the remainder on the open market, the May 4th contract price will control for the entire pack.

There remains the problem of canners who purchase in the open market alone, and cooperative organizations which did not have any specified contract price as of May 4, 1942. Attention already has been called to the possible ambiguity in subsection (d) on the question whether lack of information on one cost factor permits the canner to supply that cost factor alone from competitive data or whether the absence of any information requires him to use the completely calculated price ceiling of a most closely competitive canner. With respect to determining actual increases in raw material costs, it is likewise obvious that the Regulation can be made more effective if it provides that a canner lacking the required information can use the competitive grower prices for the same commodity in his own growing area. The comparisons made can readily be checked with the local defense boards or by examination of grower contracts as of May 4, 1942, in the particular area. Any other interpretation may result in the canner being unable to include the increased raw crop costs which the Statement recognizes he must have in order to pack in 1942. It is a commonplace that even in the same growing area the ratio between raw material costs and selling prices varies considerably among canners. Unless the Regulation permits comparison of the separate cost factors, inequities in application and difficulties in enforcement as well as possible frustration of the basic objective of maximum production are likely to result.

As already noted with respect to the same problem on the unavailability of information to determine the weighted average 1941 price per dozen, it is suggested that those canners who cannot under the method prescribed in the Regulation determine their actual increases in the cost of the raw agricultural commodity, might calculate their price ceilings on both bases. They may first use their own 1941 price experience and apply the raw material cost increase factor of the most closely competitive canner of the style of pack and particular can size of the same product, presumably in the same growing area. As an additional method of computation, they might take the completely calculated price ceiling of the most closely competitive canner of the product, and in doing so they will be entitled to pick a competing canner who sells in the same price line as they do. Here also if gross price disparities or dislocations result, the problem should be presented to OPA.

In the case of canners who in 1941 furnished fertilizer or seed to their growers and who make the same arrangements in 1942, the actual prices paid must be used. If in 1942 a canner changes his method of purchasing or the fertilizer or seed or other service given the grower, appropriate adjustments must be made. It is understood that the policy of OPA will be to scrutinize all such adjustments when made.

Most Closely Competitive Canner

It has already been seen that where a canner lacks individual information as to the weighted average price per dozen for the particular kind, grade and can size because he made no sales during the first 60-day period in 1941, or where for any reason he lacks the necessary comparative data as to the 1941 cost of raw material, there is some

ambiguity in using the alternate method suggested—i.e., comparison of separate cost factors—the canner must, as to either of these price factors, use as his base the factor of “the most closely competitive canner.” Necessarily, where as to a given kind, grade or can size, a canner lacks the essential data as to both factors, he will find it necessary to use the maximum price of the most closely competitive canner for the particular product. (Since the percentage increase for other added costs is a constant, the result will obviously be the same. Moreover, a canner lacking information as to both factors probably cannot use the 1941 weighted price of one competitor and the raw material cost increase factor of a different competitor.)

The Regulation does not specify precisely how the most closely competitive canner is to be determined. Generally, it is believed that the controlling factor will be: Whether the competitor is located in the same producing area, whether the kind, grade and can size being compared is sold by him in the same price line, and whether he pays similar amounts for raw material and labor, as the case may be. It will likewise not be possible for one canner to use the cost factor or maximum prices of a competing canner where such competing canner himself uses cost factors or maximum prices of another. The canner with whom comparison is being made must have sold the particular product in 1941 or must have the necessary cost data for raw materials in 1941. Where a canner cannot readily obtain information from closely competitive canners, subsection (d) provides that he may file an application stating the facts and obtain “specific authorization” to establish a particular price ceiling.

In the use of a competitor's factors, a canner must in good faith make every effort to obtain correct historical price information from such competing canners, brokers, price lists, local defense boards, etc. While he is not required to guarantee information furnished to him for price purposes, the prices he establishes must be justified by him in the face of the penal provisions of the statute. In this connection some confusion has arisen as to the method for determining competitors' prices. Prices paid by canned food buyers in a particular area or at a particular time cannot be utilized. The controlling factors are the price ceilings on particular products which are determined under the regulation by the competing canners. These may or may not be identical with prices generally paid by particular buyers. Nevertheless, the information upon which price ceilings are to be determined where necessary under subsection (d) must be based on data relating to sellers and not purchases by buyers.

Relation to Previously Announced Department of Agriculture Support Prices

Subsection (e) provides that if the price ceiling otherwise determined for a No. 2 size of U. S. Grade C or better canned tomatoes or canned peas is lower than the support price announced on January 24, 1942, by the Agricultural Marketing Administration, then the prices so announced for these sizes alone may be taken as the price ceiling. The apparent theory underlying this provision is that the price regulation should not be permitted to defeat a previously announced commitment by another government department. Since the Department of Agriculture offer was limited to No. 2 size cans, this section can be applied only to that size. This is

true even if the price ceilings otherwise determined for other size containers of the same grade are thereby thrown out of line. Inasmuch as the USDA support price would apply to a No. 2 can of a grade better than the U. S. Grade C, if such product is offered as a Grade C, the provisions of subsection (e) permit an adjusted ceiling for these higher grades as well. Apparently, however, the adjusted ceiling on the basis of the USDA support price for the No. 2 can can be taken even though the particular canner has not been certified and technically might not be in a position to offer the goods to the USDA.

Finally, although the USDA support price is on a net basis, where subsection (e) is used to determine a higher price ceiling for a No. 2 can of peas or tomatoes, that price represents the gross price as well as the ceiling price at which the goods may be offered to the trade as well as to the Government. In other words, brokerage and cash discount cannot be added to the support price on peas and tomatoes. Despite subsection (f), there is, however, no requirement that brokerage or cash discount be allowed in sales to the trade where the price ceiling is determined pursuant to subsection (e) and is higher than would be otherwise computed.

Procedure; Reports; and Enforcement

It has already been noted that where a canner cannot determine a price ceiling for any kind, grade or can size of any of the listed canned vegetables, because the necessary historical data is not available, and he cannot utilize the data of a most closely competitive canner, subsection (d) requires that he file an application with OPA. The contents of such application are specified in that subsection and it is expected that such applications will be considered promptly. After the authorization is given, the canner must, *within ten days* after he establishes the price, report it to OPA.

Section 1341.26 specifically requires that *all canners* selling any of the listed vegetables must file prescribed statements with OPA by July 1, 1942, showing the data on which his price ceilings for these vegetables are determined. It is understood that forms for this purpose are being prepared and will be published by OPA. Such forms undoubtedly will provide that any information furnished may be rendered confidential if a claim for such treatment is made.

Section 1341.27 makes applicable to Maximum Price Regulation 152 all of the criminal penalties and civil enforcement procedures provided by the Act. Announcement has been made that with respect to particularized price ceilings a vigorous enforcement campaign, involving checking and auditing of price ceiling determinations, will be undertaken.

Miscellaneous Provisions

Where a particular commodity is packed both during the spring and fall, the Regulation provides (Section 1341.30 (a) (4)) that the spring pack during 1941 shall be used as the basis for computing weighted average prices per dozen and the competitive raw material costs. The precise application of this provision undoubtedly will vary with particular products, but apparently the spring 1941 pack is to be compared with both the spring and fall 1942 packs.

Where a canner operates two or more factories packing the same kind, grade and can size of a specified vegetable, subsection (c) of Section 1341.22 specifies that the ceiling

price for each factory shall be determined separately except where two or more factories had the same f.o.b. 1941 price. In the latter case the ceiling price is determined for the factory which had the largest volume of production during the 1941 pack and the price so determined is applied to all of the factories concerned.

The specification of products in the definition of "canned vegetables" in Section 1341.30 (a)(3) refers simply to products by name. In some cases a particular product, such as tomato juice cocktail, may fall within a general classification, such as mixed vegetable juice, rather than under a more specific group. In general, it is understood that the customary standards of identity and trade usage will determine the question whether a particular product is or is not included in the regulation.

Inevitably, the application of a specific overall formula to each kind, grade and can size of 35 vegetables packed over widely differing areas will result in peculiar price situations. As a formal matter, Section 1341.28 recognizes the right of any affected canner to petition for a modification of the Maximum Price Regulation. As a practical matter, it is understood that OPA regards the formula prescribed as achieving an equitable and fair return for the entire line of an individual canner based upon all kinds, grades and can sizes of all of the vegetables which he packs. Instances already have developed in which the application of the formula results in a higher price ceiling for a lower grade than is allowed for a higher grade, or in price ceilings for particular can sizes which are relatively out of line. In considering such situations, the theory underlying the entire regulation, as set forth in the Statement of Considerations on pages 7025, 7026, and 7027, warrants review.

Fruit and Vegetable Market Competition

Supplies of snap and lima beans and spinach on the fresh vegetable market for the week ending May 23, 1942, were smaller than for the corresponding week in 1941, but supplies of tomatoes and green peas were larger, according to the Agricultural Marketing Service, as evidenced by carlot shipments.

Supplies of citrus fruits also were larger for the week ending May 23, 1942, than for the same date a year ago.

The following table, compiled from statistics of the AMS, gives detailed comparisons of carlot shipments on certain dates of selected vegetables and fruits:

| VEGETABLES | Week ending— | | | Season total to— | |
|---------------------------------|--------------|--------------|--------------|------------------|--------------|
| | May 23, 1941 | May 23, 1942 | May 10, 1942 | May 23, 1941 | May 23, 1942 |
| Beans, snap and lima..... | 282 | 273 | 234 | 3,290 | 3,684 |
| Tomatoes..... | 877 | 1,309 | 1,611 | 11,150 | 13,345 |
| Green peas..... | 98 | 125 | 120 | 2,143 | 2,377 |
| Spinach..... | 1 | 0 | 4 | 5,078 | 6,039 |
| Others: | | | | | |
| Domestic, competing directly.. | 1,077 | 2,745 | 1,325 | 38,064 | 44,687 |
| Imports, origin not specified.. | 4 | 5 | 3 | 2,436 | 4,020 |
| FRUITS | | | | | |
| Citrus, domestic..... | 4,193 | 4,401 | 4,254 | 118,343 | 126,596 |
| Others, domestic..... | 830 | 1,006 | 1,098 | 6,676 | 7,380 |

WAR DEVELOPMENTS AFFECTING CANNERS

Price Controls and Other Regulations Imposed on Products Used in Food Packing

During the week a number of government regulations were issued by various agencies, affecting products that are used in canning operations. Highlights of some of these are given briefly in the following paragraphs:

Mechanical rubber goods have been placed under a price ceiling. Maximum Price Regulation No. 149 provides that specified items of this nature may not be sold at a price higher than the manufacturer's list price, less all discounts, as of October 1, 1941. Among the items covered are belting, hose and tubing, jar rings and container sealing compounds, pipes and fittings, and plumber's supplies.

Plumbing and heating equipment sales which were restricted by Limitation Order L-79 are now relaxed by the removal of the ban on equipment necessary for civilian needs.

Second-hand bags are affected by an Amendment No. 2 to the original Maximum Price Regulation No. 55. The amendment removes the quantity restriction from sales and establishes maximum prices for sizes not included in the original order.

Solid fiber, corrugated, set-up, and folding box maximum prices continue unchanged, it is announced by the Office of Price Administration. An increase had been discussed at meetings attended by representatives of that industry with OPA officials.

Sugar-saving Advice Issued for Home-canning

Following up its liberalization of sugar allotments for home canning, whereby housewives are permitted one pound per four quarts of finished home-canned fruit and one pound a year per person for preparing preserves, jams and jellies, the Consumer Division of the Office of Price Administration has issued instructions on home-canning methods, with a view to making the extra sugar allotments do the most good.

These take the form of recommendations that have been prepared by the Department of Agriculture on home-canning procedures. One of the sugar-saving methods recommended in the official release is the substitution of honey or corn syrup for as much as half the sugar needed.

ODT Puts Restriction on Export Goods Shipments

The Office of Defense Transportation has issued instructions to carriers which are designed to prohibit the shipment of export goods into United States ports until shipping space is available. The new system goes into effect June 1 and will involve shipments originating in both Canada and the United States.

After the new regulations go into effect, no export shipments by any governmental agency will be permitted to move into a port area until block-permits authorizing such movement have been issued by the Chief of Transportation in the War Department.